



भारत का राजपत्र

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सं. 06] नई दिल्ली, फरवरी 9—फरवरी—15, 2020, शनिवार/माघ 20—माघ 26, 1941
No. 06] NEW DELHI, FEBRUARY 9—FEBRUARY 15, 2020, SATURDAY/ MAGHA 20—MAGHA 26, 1941

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 10 फरवरी, 2020

का.आ. 173—पेंशन निधि विनियामक और विकास प्राधिकरण अधिनियम, 2013 (2013 का 23) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतदद्वारा, श्री प्रमोद कुमार सिंह, सचिव, भारतीय प्रतिस्पर्धा आयोग को पदभार ग्रहण करने की तारीख से 62 वर्ष की आयु पूरी होने तक अथवा अगले आदेशों तक, जो भी पहले हो, 4.00 लाख रुपए प्रतिमाह के समेकित वेतन (आवास तथा कार की सुविधा के बिना) पर पेंशन निधि विनियामक और विकास प्राधिकरण (पीएफआरडीए) में पूर्णकालिक सदस्य (विधि) के पद पर नियुक्त करती है।

[फा. सं. 19/2/2019-पीआर]

अंशुमन शर्मा, उप सचिव

MINISTRY OF FINANCE
(Department of Financial Services)

New Delhi, the 10th February, 2020

S.O. 173.—In exercise of powers conferred by Section 4 of the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013), the Central Government hereby appoints Shri Pramod Kumar Singh, Secretary, Competition Commission of India to the post of Whole-Time Member (Law), Pension Fund Regulatory and Development Authority (PFRDA), with a consolidated salary of Rs. 4.00 lakh per month (without facility of house and car) w.e.f. the date of assumption of charge of the post, till he attains the age of 62 years, or until further order, whichever is earlier.

[F. No. 19/2/2019-PR]

ANSHUMAN SHARMA, Dy. Secy.

कोयला मंत्रालय

नई दिल्ली, 11 फरवरी, 2020

का.आ. 174.—केन्द्रीय सरकार कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 7 की उपधारा (1) के अधीन जारी भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्या का. आ. 655, तारीख 26 अप्रैल, 2019 द्वारा जो भारत के राजपत्र, भाग II, खण्ड 3, उप-खण्ड (ii), तारीख 4 मई, 2019 में प्रकाशित की गई थी, उस अधिसूचना से संलग्न अनुसूची में यथा विनिर्दिष्ट परिक्षेत्र में 912.799 हेक्टर (लगभग) या 2255.575 एकड़ (लगभग) माप वाली भूमि में और या उस पर के सभी अधिकारों के अर्जन करने के अपने आशय की सूचना दी थी;

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 8 के अनुसरण में केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार का, पूर्वोक्त रिपोर्ट पर विचार करने के पश्चात् और ओडिशा सरकार से परामर्श करने के पश्चात् यह समाधान हो गया है, कि इसे संलग्न अनुसूची में यथा वर्णित 912.799 हेक्टर (लगभग) या 2255.575 एकड़ (लगभग) माप वाली भूमि और ऐसी भूमि में या उस पर के सभी अधिकार अर्जित किए जाने चाहिए।

अतः, अब, उक्त अधिनियम की धारा 9 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि, अनुसूची में यथा वर्णित 912.799 हेक्टर (लगभग) या 2255.575 एकड़ (लगभग) माप वाली भूमि में या उस पर के सभी अधिकार अर्जित किए जाते हैं।

इस अधिसूचना के अंतर्गत आने वाले क्षेत्र के रेखांक संख्या एससीसीएल/नैनी क्षेत्र/9(1) अधिसूचना/2019/2, तारीख 20 दिसम्बर, 2019 का निरीक्षण कलेक्टर, जिला अंगुल, ओडिशा के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता - 700 001 के कार्यालय में या महाप्रबंधक, नैनी क्षेत्र, सिंगरेनी कोलियरीज़ कंपनी लिमिटेड (एक सरकारी कंपनी), एच. नं. आफ एनएसी, मिश्रापाड़ा, जिला अंगुल-759122, ओडिशा के कार्यालय में किया जा सकता है।

अनुसूची

दि सिंगरेनी कोलियरीज़ कंपनी लिमिटेड
नैनी ओपनकास्ट परियोजना, नैनी क्षेत्र
जिला अंगुल, ओडिशा

(रेखांक संख्या एससीसीएल/नैनी क्षेत्र/9(1) अधिसूचना/2019/2, तारीख 20 दिसम्बर, 2019)

सभी अधिकार:

तालिका

क्रम. सं.	ग्राम का नाम	थाना	थाना सं.	जिला	भूमि का प्रकार (एकड़ में)			जोड़ (एकड़ में)	टिप्पणियां
					अभिधृति	वन	गैर- वन सरकारी		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1	कसीडीहा	छेंडीपड़ा	95	अंगुल	2.375	24.229	1.853	28.457	भाग
2	तेन्तुलोई गोपीनाथपुर	छेंडीपड़ा	94	अंगुल	-	3.610	1.616	5.226	भाग
3	थलीपसी	छेंडीपड़ा	101	अंगुल	50.793	10.396	7.542	68.730	भाग
4	बिम्बाधरपुर	छेंडीपड़ा	102	अंगुल	88.276	126.273	21.926	236.475	पूर्ण
5	कुदापसी	छेंडीपड़ा	103	अंगुल	104.990	140.217	4.240	249.448	भाग
6	धौराखमान	छेंडीपड़ा	104	अंगुल	29.897	41.667	6.553	78.117	भाग
7	छेंडीपड़ा आरक्षित वन	छेंडीपड़ा	-	अंगुल	-	1589.122	-	1589.122	भाग
जोड़ : (एकड़ में)					276.331	1935.515	43.730	2255.575	
जोड़ : 2255.575 एकड़ (लगभग) या 912.799 हेक्टेयर (लगभग)									

1. ग्राम कसीडीहा में अर्जित किए गए प्लाट संख्यांक:

1 से 16, 17(भाग), 20(भाग), 23(भाग), 24(भाग), 25 से 29, 30(भाग), 31, 32(भाग), 33(भाग), 34(भाग), 36(भाग), 3092(भाग), 3138, 3176.

2. ग्राम तेन्तुलोई गोपीनाथपुर में अर्जित किए गए प्लाट संख्यांक:

193(भाग), 194(भाग), 195(भाग), 196 से 199, 200(भाग), 201(भाग).

3. ग्राम थलीपसी में अर्जित किए गए प्लाट संख्यांक:

1 से 17, 18(भाग), 19(भाग), 20(भाग), 52(भाग), 53 से 62, 63(भाग), 64(भाग), 66(भाग), 67, 68(भाग), 69 से 118, 119(भाग), 120(भाग), 229(भाग), 233(भाग), 234(भाग), 235, 236, 237(भाग), 238(भाग), 239, 240, 241(भाग), 242(भाग), 243, 244, 245(भाग), 247(भाग), 250(भाग), 251 से 431, 432(भाग), 433(भाग), 434(भाग), 436(भाग), 437(भाग), 449(भाग), 471(भाग), 472(भाग), 473, 474, 475,

476(भाग), 477 से 545, 546(भाग), 547(भाग), 548(भाग), 549, 550(भाग), 551(भाग), 552(भाग), 553(भाग), 561(भाग), 565, 566, 568, 569, 570, 576, 577, 578, 579, 580, 581, 582, 583.

4. ग्राम विम्बाधरपुर में अर्जित किए गए प्लॉट संख्याक:

1 से 437.

5. ग्राम कुदापसी में अर्जित किए गए प्लॉट संख्याक:

1 से 460, 461(भाग), 462(भाग), 463 से 466, 467(भाग), 492(भाग), 499(भाग), 500(भाग), 501 से 522, 523(भाग), 527(भाग), 528, 529(भाग), 530(भाग), 531(भाग), 532 से 630, 631(भाग), 632(भाग), 633(भाग), 634(भाग), 635(भाग), 636 से 677, 678(भाग), 679(भाग), 680(भाग), 681(भाग), 682(भाग), 685(भाग), 686(भाग), 687(भाग), 688, 689(भाग), 690, 691(भाग), 692(भाग), 737(भाग), 738, 739, 740, 741(भाग), 769(भाग), 770 से 783, 784(भाग), 795(भाग), 796(भाग), 797(भाग), 802(भाग), 803(भाग), 804, 805, 806, 807(भाग), 809(भाग), 955(भाग), 956(भाग), 1223, 1224(भाग), 1225 से 1231, 1233 से 1297, 1300 से 1311, 1314, 1316 से 1322, 1324 से 1331, 1333 से 1363.

6. ग्राम धौराखमान में अर्जित किए गए प्लॉट संख्याक :

1 से 19, 20(भाग), 21(भाग), 22 से 52, 53(भाग), 54(भाग), 84(भाग), 85(भाग), 86 से 101, 102(भाग), 103, 104, 105(भाग), 176(भाग), 178(भाग), 179(भाग), 180(भाग), 181(भाग), 182 से 212, 213(भाग), 214 से 221, 222(भाग), 223(भाग), 224(भाग), 225(भाग), 226(भाग), 255(भाग), 256(भाग), 257(भाग), 258, 259, 260(भाग), 261, 262(भाग), 265(भाग), 266(भाग), 267, 268(भाग), 269(भाग), 270(भाग), 550 से 553, 558 से 563, 566, 567, 570 से 572, 574, 575, 578 से 582, 584, 587 से 592, 595, 596, 598, 599, 600, 605, 607, 612, 614.

7. छेंडीपड़ा आरक्षित वन : 1589.122 एकड़ अथवा 643.095 हेक्टेयर

सीमा-विवरण:

नैनी कोयला ब्लॉक की सीमा बिंदु संख्या 1 से शुरू होती है, जो स्टेट हाइवे संख्या 63 के किनारे और गौदूनी नाला के दक्षिणी किनारे पर स्थित है, जहां से सीमा बिंदु संख्या 29 तक जाने के लिए स्टेट हाइवे संख्या 63 (अंगुल टाउन की ओर) के साथ दक्षिण-पूर्व दिशा में आगे बढ़ती है। बिंदु संख्या 29 से बिंदु संख्या 136 तक सीमा बाएं मुड़के उत्तर-पूर्व दिशा की ओर बढ़ती है, और छेंडीपड़ा आरक्षित वन पर चलती हुई बिंदु संख्या 136 तक पहुँचती है। बिंदु संख्या 136 से बिंदु संख्या ए तक सीमा उत्तर-पूर्व की ओर मुड़के गाँव तेंतुलोई गोपीनाथपुर से होकर आगे सर्वे नंबर 195, 194, 193, 201, 200 से होकर गुजरती है। बिंदु संख्या ए से बिंदु संख्या सी तक सीमा उत्तर-पूर्व की ओर मुड़के गाँव कसीडीहा से होकर आगे सर्वे नंबर 36, 34, 33, 3092, 32, 30, 24, 23, 20, 17 से होकर गुजरती है। बिंदु संख्या सी से बिंदु संख्या ई तक सीमा आगे बढ़ कर उत्तर-पूर्व की दिशा में गाँव थलीपसी से होकर गुजरती है, जो सर्वे नंबर 20, 19, 18, 66, 68, 64, 63, 52, 119, 120, 229, 233, 234, 237, 238, 241, 242, 245, 247, 250, 437, 436, 432, 433, 434, 449, 471, 472, 476, 561, 551, 552, 553, 550, 548, 547, 546 से होकर गुजरती है। बिंदु संख्या ई से बिंदु संख्या आई तक सीमा आगे बढ़ कर उत्तर-पूर्व की दिशा में गाँव कुदापसी से होकर गुजरती है, जो सर्वे नंबर 678, 679, 680, 681, 682, 685, 686, 687, 689, 692, 691, 635, 634, 633, 632, 631, 737, 741, 769, 809, 807, 802, 803, 797, 796, 795, 784, 955, 956, 531, 530, 529, 527, 523, 499, 500, 492, 467, 1224, 462, 461 से होकर गुजरती है। बिंदु संख्या आई से बिंदु संख्या 30 तक सीमा आगे बढ़ कर उत्तर-पूर्व की दिशा में गाँव धौराखमान से होकर गुजरती है, जो सर्वे

नंबर 222, 223, 224, 226, 225, 213, 226, 257, 255, 260, 268, 269 से होकर गुजरती है। बिंदु संख्या 30 से बिंदु संख्या 31 तक सीमा बायाँ की ओर मुड़के उत्तर-पश्चिम दिशा में जाती है, जो कि धौराखमान से होकर गुजरती है जो सर्वे नंबर 269, 268, 270, 266, 265, 262, 181, 180, 178, 179, 176, 105, 566, 567, 102, 85, 84, 54, 53, 21, 20 से होकर गुजरती है और छेंडीपड़ा आरक्षित वन सीमा पर बिंदु संख्या 31 को छूती है। बिंदु संख्या 31 से लेकर बिंदु संख्या 35 तक सीमा उत्तर-पश्चिम दिशा में आगे बढ़ कर छेंडीपड़ा आरक्षित वन पर स्थित बिंदु संख्या 35 से मिलती है। बिंदु संख्या 35 से बिंदु संख्या 1 तक की सीमा बायाँ ओर मुड़के दक्षिण-पश्चिम दिशा में गौदुनी नाला के दक्षिण किनारे से धारा के साथ बिंदु संख्या 1 से मिलती है जहां से सीमा शुरू हुई थी।

(1) ग्राम : तेंतुलोई गोपीनाथपुर : ग्राम की सीमा बिंदु संख्या 136, ए, और बी से घिरी है।

ग्राम की सीमा बिंदु संख्या 136 से शुरू होती है, जो कि त्रिकोणीय जंक्शन बिंदु के पास स्थित है और सर्वे नंबर 195 पर छेंडीपड़ा आरक्षित वन सीमा और ब्लॉक सीमा को छूती है। बिंदु संख्या 136 से बिंदु संख्या ए तक, ब्लॉक सीमा उत्तर पूर्व दिशा में ग्राम तेंतुलोई गोपीनाथपुर से होते हुए सर्वे नंबर 195, 194, 193, 201, 200 से गुजर कर सर्वे नंबर 200 पर उत्तर पूर्वी छोर पर गाँव की सीमा को छूती है। बिंदु संख्या ए से बिंदु संख्या बी तक ग्राम की सीमा सर्वे नंबर 200, 199, 195 से होकर जाती हुई बिंदु संख्या बी पर छेंडीपड़ा आरक्षित वन सीमा को उत्तर-पूर्व दिशा में छूती है। बिंदु संख्या बी से बिंदु संख्या 136 तक यह तेंतुलोई गोपीनाथपुर ग्राम और छेंडीपड़ा आरक्षित वन के बीच सामान्य सीमा है।

(2) ग्राम : कसीडीहा : ग्राम की सीमा बिंदु संख्या ए, सी, डी, और बी से घिरी है।

ग्राम की सीमा रेखा बिंदु संख्या ए, जो कि सर्वे नंबर 36 और सर्वे नंबर 34 के लिए आम बिंदु पर स्थित है, से शुरू होती है। बिंदु संख्या ए से बिंदु संख्या सी तक, ब्लॉक सीमा उत्तर-पूर्व दिशा की ओर जाती है, जो कसीडीहा गाँव से होते हुए सर्वे नंबर 36, 34, 33, 3092, 32, 30, 24, 23, 20, 17 को छूती हुई उत्तर-पूर्व की ओर गाँव की सीमा सर्वे नंबर 17 पर समाप्त होती है। बिंदु संख्या सी से बिंदु संख्या डी तक गाँव की सीमा सर्वे नंबर 17, 16, 15, 14, 13, 12, 11, 10, 9, 8, 7, 6, 3176, 5 को संवेशित करते हुए उत्तर-पश्चिम दिशा में चली गई और त्रिकोणीय जंक्शन बिंदु से गुजरती है, और सर्वे नंबर 2, 1 के साथ आगे बढ़ कर छेंडीपड़ा आरक्षित वन सीमा को बिंदु संख्या डी पर छूती है। बिंदु संख्या डी से बिंदु संख्या बी तक यह कसीडीहा गाँव और छेंडीपड़ा आरक्षित वन के बीच आम सीमा है। बिंदु संख्या बी से बिंदु संख्या ए तक की गाँव की सीमा दक्षिण-पश्चिम दिशा में सर्वे नंबर 1, 30, 31, 32, 36 को समावेश करती है और बिंदु संख्या ए पर सीमा समाप्त होती है।

(3) ग्राम : थलीपसि : ग्राम की सीमा बिंदु संख्या सी, ई, एफ, जी, और डी से घिरी है।

ग्राम की सीमा रेखा बिंदु संख्या सी से शुरू होती है, जो सर्वे नंबर 20 पर स्थित है। बिंदु संख्या सी से बिंदु संख्या ई तक, ब्लॉक सीमा उत्तर-पूर्व की दिशा में गाँव थलीपसि के बीच से सर्वे नंबर 20, 19, 18, 66, 68, 64, 63, 52, 119, 120, 229, 233, 234, 237, 238, 241, 242, 245, 247, 250, 437, 436, 432, 433, 434, 449, 471, 472, 476, 561, 551, 552, 553, 550, 548, 547 और 546 से गुजरकर उत्तर-पूर्व दिशा में गाँव की सीमा सर्वे नं 546 को छूती है। बिंदु संख्या ई से लेकर बिंदु संख्या एफ तक, ग्राम की सीमा उत्तर-पश्चिम दिशा में सर्वे नं. 546, 545, 542, 541, 538, 537, 536, 533, 532, 531, 530, 528, 527, 526, 525, 524, 523 को संवेशित करते हुए जाती है। बिंदु संख्या एफ से बिंदु संख्या जी तक गाँव की सीमा सर्वे नंबर -510, 509, 498, 414, 413, 412, 411, 410, 409, 408, 407, 406, 403, 402, 401, 119, 96, 93, 89, 86, 85, और 1 को संवेशित करते हुए पश्चिम दिशा में बिंदु संख्या जी पर छेंडीपड़ा आरक्षित वन सीमा को छूती है। बिंदु संख्या जी से बिंदु संख्या डी तक यह थलीपसि ग्राम और छेंडीपड़ा आरक्षित वन के बीच आम सीमा है। बिंदु संख्या डी से बिंदु संख्या सी तक ग्राम की सीमा दक्षिण-पूर्व दिशा में सर्वे नंबर 1, 2, 3, 578, 577, 11, 15, 16, 17, 18, 20 को संवेशित करते हुए बिंदु संख्या सी पर समाप्त होती है।

(4) ग्राम : विम्बाधरपुर : ग्राम की सीमा बिंदु संख्या जी, एफ, और एच से घिरी है।

ग्राम की सीमा रेखा बिंदु संख्या जी से शुरू होती है जो त्रिकोणीय जंक्शन बिंदु के करीब है और छेंडीपड़ा आरक्षित वन सीमा को छूती है। बिंदु संख्या जी से बिंदु संख्या एफ तक, ग्राम की सीमा सर्वे नंबर 1, 162, 163, 164, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 367, 368, 369, 370, 372, 373, 378, 379 को संवेशित करते हुए पूर्व दिशा में जाती है। बिंदु संख्या एफ से बिंदु संख्या एच तक गांव की सीमा सर्वे नंबर 387, 379, 378, 377, 376, 375, 364, त्रिकोणीय जंक्शन बिंदु, 363, 362, 353, 415, 412, 352, 47, 44, 34, 392, 399, 33, 389, 430, 32, 19, 17, 4 को संवेशित करते हुए उत्तर-पश्चिम दिशा में बिंदु संख्या एच पर छेंडीपड़ा आरक्षित वन सीमा को छूती है। बिंदु संख्या एच से बिंदु संख्या जी तक यह बिम्बाधरपुर गांव और छेंडीपड़ा आरक्षित वन के बीच आम सीमा है, जो कि बिंदु संख्या जी पर समाप्त होती है।

(5) ग्राम : कुदापसी: ग्राम की सीमा बिंदु संख्या ई, आई, जे, एच और एफ से घिरी है।

ग्राम की सीमा रेखा बिंदु संख्या ई से शुरू होती है, जो कि सर्वे नंबर 678 पर त्रिकोणीय जंक्शन बिंदु के करीब स्थित है। बिंदु संख्या ई से बिंदु संख्या आई तक ब्लॉक की सीमा उत्तर-पूर्व दिशा की ओर कुदापसी के बीच सर्वे नं. 678, 679, 680, 681, 682, 685, 686, 687, 689, 692, 691, 635, 634, 633, 632, 631, 737, 741, 769, 809, 807, 802, 803, 797, 796, 795, 784, 955, 956, 531, 530, 529, 527, 523, 499, 500, 492, 467, 1224, 462, 461 के मध्य से गुजर कर जाती है। बिंदु संख्या आई से बिंदु संख्या जे तक ग्राम की सीमा उत्तर-पश्चिम दिशा की ओर सर्वे नं. 461, त्रिकोणीय जंक्शन बिंदु, 393, 392, 391, 390, 389, 388, 1318, 380, 379, 365, 364, त्रिकोणीय जंक्शन बिंदु, 47, 46, 44, 1230, 1229, 1228, 27 को संवेशित करते हुए छेंडीपड़ा आरक्षित वन सीमा को बिंदु संख्या जे पर छूती है। बिंदु संख्या जे से बिंदु संख्या एच तक यह कुदापसी ग्राम और छेंडीपड़ा आरक्षित वन के बीच सामान्य सीमा है। बिंदु संख्या एच से बिंदु संख्या एफ और बिंदु संख्या ई, ग्राम की सीमा दक्षिण-पूर्व दिशा में सर्वे नंबर 1, 1316, 1234, 1235, 1353, 1236, 1237, 1, 2, 112, 113, 127, 134, 1351, त्रिकोणीय जंक्शन बिंदु, 1351, 1307, 138, 1322, 139, 1223, 184, 185, त्रिकोणीय जंक्शन बिंदु, 186, 188, 202, 1309, 204, 673, 676, 677, 678, को संवेशित करते हुए बिंदु संख्या ई पर समाप्त होती है।

(6) ग्राम : धौराखमान की सीमा बिंदु संख्या आई, 30, 31 और जे से घिरी है।

ग्राम की सीमा रेखा बिंदु संख्या आई से शुरू होती है, जो कि सर्वे नंबर 222 पर स्थित है। बिंदु संख्या आई से बिंदु संख्या 30 तक ब्लॉक की सीमा ग्राम धौराखमान और सर्वे नंबर 222, 223, 224, 226, 225, 213, 226, 257, 256, 255, 260, 268, 269 से गुजर कर उत्तर-पूर्व दिशा की ओर जाती है। बिंदु संख्या 30 से बिंदु संख्या 31 तक ब्लॉक सीमा सर्वे नंबर 269, 268, 270, 266, 265, 262, 181, 180, 178, 179, 176, 105, 566, 567, 102, 85, 84, 54, 53, 21, 20 को संवेशित करते हुए उत्तर-पश्चिम दिशा में छेंडीपड़ा आरक्षित वन सीमा को बिंदु संख्या 31 पर छूती है। बिंदु संख्या 31 से बिंदु संख्या जे तक, यह धौराखमान ग्राम और छेंडीपड़ा आरक्षित वन के बीच आम सीमा है। बिंदु संख्या जे से बिंदु संख्या आई तक, ग्राम की सीमा सर्वे नंबर 1, 2, 4, 558, 551, 7, 553, 552, 553, 34, 35, 36, 37, त्रिकोणीय जंक्शन बिंदु, 90, 91, 92, 95, 200, त्रिकोणीय जंक्शन बिंदु, 201, 202, 203, 219, 220, 221, त्रिकोणीय जंक्शन बिंदु, 222, को संवेशित करते हुए बिंदु संख्या आई पर समाप्त होती है।

[फा. सं. 43015/18/2015-एलए एण्ड आईआर]

राम शिरोमणि सरोज, उप सचिव

MINISTRY OF COAL

New Delhi, the 11th February, 2020

S.O. 174.—Whereas, by the notification of the Government of India in the Ministry of Coal number S.O. 655, dated the 26th April, 2019, issued under sub-section (1) of section 7 of the Coal Bearing Areas (Acquisitions and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), and published in the Gazette of India, Part-II, Section 3, Sub-section (ii), dated the 4th May, 2019, the Central Government gave notice of its intention to acquire the land measuring 912.799 hectares (approximately) or 2255.575 acres (approximately) and all rights in or over such lands specified in the Schedule appended to that notification;

And, whereas, the competent authority in pursuance of section 8 of the said Act, has made his report to the Central Government;

And, whereas, the Central Government after considering the report aforesaid and after consulting the Government of Odisha, is satisfied that the lands measuring 912.799 hectares (approximately) or 2255.575 acres (approximately) and all rights in or over such lands as described in the Schedule appended hereto should be acquired.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 9 of the said Act, the Central Government hereby declares that the land measuring 912.799 hectares (approximately) or 2255.575 acres (approximately) and all rights in or over such lands described in the Schedule are hereby acquired.

The plan bearing number SCCL/Naini Area/9(1)Notification/2019/2, dated the 20th December, 2019 of the area covered by this notification may be inspected in the office of the Collector, District Angul, Odisha or in the office of the Coal Controller, 1, Council House Street, Kolkata -700 001 or in the office of the General Manager, Naini Area, The Singareni Collieries Company Limited (A Government Company), H. NO. 129 of NAC, Mishrapada, District Angul -759122, Odisha.

SCHEDULE

THE SINGARENI COLLIERIES COMPANY LIMITED
Naini Opencast Project, Naini Area
District-Angul, Odisha

[Plan bearing number SCCL/Naini Area/9(1)Notification/2019/2, dated the 20th December, 2019]

All Rights:

TABLE

1. Plot numbers acquired in village Kasidiha :

1 to 16, 17(P), 20(P), 23(P), 24(P), 25 to 29, 30(P), 31, 32(P), 33(P), 34(P), 36(P), 3092(P), 3138, 3176

2. Plot numbers acquired in village Tentuloi gopinathpur :

193(P), 194(P), 195(P), 196 to 199, 200(P), 201(P).

3. Plot numbers acquired in village Thalipasi :

1 to 17, 18(P), 19(P), 20(P), 52(P), 53 to 62, 63(P), 64(P), 66(P), 67, 68(P), 69 to 118, 119(P), 120(P), 229(P), 233(P), 234(P), 235, 236, 237(P), 238(P), 239, 240, 241(P), 242(P), 243, 244, 245(P), 247(P), 250(P), 251 to 431, 432(P), 433(P), 434(P), 436(P), 437(P), 449(P), 471(P), 472(P), 473, 474, 475, 476(P), 477 to 545, 546(P), 547(P), 548(P), 549, 550(P), 551(P), 552(P), 553(P), 561(P), 565, 566, 568, 569, 570, 576, 577, 578, 579, 580, 581, 582, 583.

4. Plot numbers acquired in village Bimbadharapur :

1 to 437.

5. Plot numbers acquired in village Kudapasi :

1 to 460, 461(P), 462(P), 463 to 466, 467(P), 492(P), 499(P), 500(P), 501 to 522, 523(P), 527(P), 528, 529(P), 530(P), 531(P), 532 to 630, 631(P), 632(P), 633(P), 634(P), 635(P), 636 to 677, 678(P), 679(P), 680(P), 681(P), 682(P), 685(P), 686(P), 687(P), 688, 689(P), 690, 691(P), 692(P), 737(P), 738, 739, 740, 741(P), 769(P), 770 to 783, 784(P), 795(P), 796(P), 797(P), 802(P), 803(P), 804, 805, 806, 807(P), 809(P), 955(P), 956(P), 1223, 1224(P), 1225 to 1231, 1233 to 1297, 1300 to 1311, 1314, 1316 to 1322, 1324 to 1331, 1333 to 1363.

6. Plot numbers acquired in village Dhaurakhaman:

1 to 19, 20(P), 21(P), 22 to 52, 53(P), 54(P), 84(P), 85(P), 86 to 101, 102(P), 103, 104, 105(P), 176(P), 178(P), 179(P), 180(P), 181(P), 182 to 212, 213(P), 214 to 221, 222(P), 223(P), 224(P), 225(P), 226(P), 255(P), 256(P), 257(P), 258, 259, 260(P), 261, 262(P), 265(P), 266(P), 267, 268(P), 269(P), 270(P), 550 to 553, 558 to 563, 566, 567, 570 to 572, 574, 575, 578 to 582, 584, 587 to 592, 595, 596, 598, 599, 600, 605, 607, 612, 614.

7. Chhendipada Reserve forest: 1589.122 acres or 643.095 hectares.

Boundary Description :

The Naini Coal Block Boundary starts from Point No.1 which is located by the side of State Highway No.63, and on the south bank of Gauduni Nala. Whence the boundary moves forward in South-East direction along the State Highway No.63 (towards Angul Town) up to point No.29. From point No.29 to Point No.136 the boundary takes left turn towards North-East direction, moving across the CHHENDIPADA RF and to reach point No.136, located on the R F boundary. From Point No.136 to Point No.A the boundary moved further North-East direction across the village TENTULOI GOPINATHAPUR passing through Survey No.195, 194, 193, 201, 200. From Point No.A to Point No.C the boundary moved further North-East direction across the village KASIDIHA passing through Survey No.36, 34, 33, 3092, 32, 30, 24, 23, 20, 17. From Point No.C to Point No.E the boundary moved further North-East direction across the village THALIPASI passing through Survey No.20, 19, 18, 66, 68, 64, 63, 52, 119, 120, 229, 233, 234, 237, 238, 241, 242, 245, 247, 250, 437, 436, 432, 433, 434, 449, 471, 472, 476, 561, 551, 552, 553, 550, 548, 547, 546. From Point No.E to Point No.I the boundary moved further North-East direction across the village KUDAPASI passing through Survey No. 678, 679, 680, 681, 682, 685, 686, 687, 689, 692, 691, 635, 634, 633, 632, 631, 737, 741, 769, 809, 807, 802, 803, 797, 796, 795, 784, 955, 956, 531, 530, 529, 527, 523, 499, 500, 492, 467, 1224, 462, 461. From Point No.I to Point No.30 the boundary moved further North-East direction across the village DHAURAKHAMAN passing through Survey No. 222, 223, 224, 226, 225, 213, 226, 257, 256, 255, 260, 268, 269. From Point No.30 to Point

No.31 the boundary takes left turn towards North-West direction across the village DHAURAKHAMAN passing through Survey. No. 269, 268, 270, 266, 265, 262, 181, 180, 178, 179, 176, 105, 566, 567, 102, 85, 84, 54, 53, 21, 20 and touching the CHHENDIPADA RF boundary at Point No.31. From Point No.31 to Point No.35 the boundary further moved in North-West direction across the CHHENDIPADA RF to meet the Point No.35 located on the RF boundary. From Point No.35 to point No.1 the Boundary takes left turn towards South-West direction along the south bank of Gauduni Nala towards upstream and closed at Point No.1 whence the boundary started.

(1) Village: TENTULOI GOPINATHAPUR : Boundary bounded by Point No.136, A, and B.

The village boundary line starts from Point No.136, which is situated close to the tri-junction point, touching the CHHENDIPADA RF boundary and block boundary at Survey No.195. From Point No.136 to Point No.A, the block boundary moved towards North-East direction across the village TENTULOI GOPINATHAPUR passing through Survey No.195, 194, 193, 201, 200 touching the village boundary at North-East end at Survey No.200. From Point No.A to Point No.B the village boundary moved in North-East direction covering the Survey No.200, 199, 195, and touching the Chhendipada RF boundary at Point No.B. From Point No.B to Point No.136 it is common boundary between TENTULOI GOPINATHAPUR village and CHHENDIPADA RF.

(2) Village: KASIDIHA: Boundary bounded by Point No. A, C, D, and B.

The village boundary line starts from Point No. A, which is situated at common point for Survey No.36 and Survey No.34. From Point No.A to Point No.C, the block boundary moved towards North-East direction across the village KASIDIHA passing through Survey No. 36, 34, 33, 3092, 32, 30, 24, 23, 20, 17 touching the village boundary at North-East end at Survey No.17. From point No.C to Point No.D the village boundary moved in North-West direction covering the Survey No. 17, 16, 15, 14, 13, 12, 11, 10, 9, 8, 7, 6, 3176, 5 and passing through tri-junction point, and moved along Survey No. 2, 1, touching the CHHENDIPADA RF boundary at Point. No.D. From point No.D to Point No.B it is a common boundary between KASIDIHA village and CHHENDIPADA RF. The village boundary from Point No.B to Point No. A moves in South-West direction covering the Survey No.1, 30, 31, 32, 36 and closing the boundary at Point No. A.

(3) Village: THALIPASI : Boundary bounded by Point No.C, E, F, G, and D.

The village boundary line starts from Point No. C, which is situated at Survey No.20. From Point No.C to Point No.E, the block boundary moved towards North-East direction across the village THALIPASI passing through Survey No.20, 19, 18, 66, 68, 64, 63, 52, 119, 120, 229, 233, 234, 237, 238, 241, 242, 245, 247, 250, 437, 436, 432, 433, 434, 449, 471, 472, 476, 561, 551, 552, 553, 550, 548, 547 and 546 touching the village boundary at North-East end at Survey No.546. From point No.E to Point No.F the village boundary moved in North-West direction covering the Survey No.546, 545, 542, 541, 538, 537, 536, 533, 532, 531, 530, 528, 527, 526, 525, 524, 523. From point No.F to Point No.G the village boundary moved in West direction covering Survey No.510, 509, 498, 414, 413, 412, 411, 410, 409, 408, 407, 406, 403, 402, 401, 119, 96, 93, 89, 86, 85, and 1 touching the CHHENDIPADA RF boundary at Point. No.G. From Point No.G to Point No.D it is common boundary between THALIPASI village and CHHENDIPADA RF. From Point No.D to Point No.C the village boundary moved in South-East direction covering the Survey No.1, 2, 3, 578, 577, 11, 15, 16, 17, 18, 20, and closing the boundary at Point No. C.

(4) Village: BIMBADHARAPUR : Boundary bounded by Point No.G, F, and H.

The village boundary line starts from Point No.G which is close to tri-junction point and touching the CHHENDIPADA RF BOUNDARY. From Point No.G to Point No.F the village boundary moved in East direction covering the Survey No. 1, 162, 163, 164, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 367, 368, 369, 370, 372, 373, 378, 379. From Point No.F to Point No.H the village boundary moved in North-West direction covering the Survey No.387, 379, 378, 377, 376, 375, 364, tri-junction point, 363, 362, 353, 415, 412, 352, 47, 44, 34, 392, 399, 33, 389, 430, 32, 19, 17, 4 and touching the CHHENDIPADA RF boundary at Point No.H. From Point No.H to Point No. G it is common boundary between BIMBADHARAPUR village and CHHENDIPADA RF closing the boundary at Point No. G.

(5) Village: KUDAPASI : Boundary bounded by Point No. E, I, J, H, and F.

The village boundary line starts from Point No.E, which is situated close to the tri-junction point at Survey No.678. From Point No.E to Point No.I the block boundary moved towards North-East direction across the village KUDAPASI passing through Survey No.678, 679, 680, 681, 682, 685, 686, 687, 689, 692, 691, 635, 634, 633, 632, 631, 737, 741, 769, 809, 807, 802, 803, 797, 796, 795, 784, 955, 956, 531, 530, 529, 527, 523, 499, 500, 492, 467, 1224, 462, 461. From Point No.I to Point No.J the village boundary moved in North-West direction covering the Survey No.461, tri-junction point, 393, 392, 391, 390, 389, 388, 1318, 380, 379, 365, 364, tri-junction point, 47, 46, 44, 1230, 1229, 1228, 27 and touching the CHHENDIPADA RF boundary at Point No.J. From Point No.J to Point No.H it is common boundary between KUDAPASI village and CHHENDIPADA RF. From Point No.H to Point No. F and Point No. E. the village boundary moved in South-East direction covering the Survey No.1, 1316, 1234, 1235, 1353, 1236, 1237, 1, 2, 112, 113, 127, 134, 1351, tri-junction point, 1351, 1307, 138, 1322, 139, 1223, 184, 185, tri-junction point, 186, 188, 202, 1309, 204, 673, 676, 677, 678, and closing the boundary at Point No. E.

(6) Village: DHAURAKHAMAN: Boundary bounded by Point No. I, 30, 31 and J.

The village boundary line starts from Point No.I, which is situated at Survey No. 222. From Point No.I to Point No.30 the block boundary moved towards North-East direction across the village DHAURAKHAMAN passing through Survey No. 222, 223, 224, 226, 225, 213, 226, 257, 256, 255, 260, 268, 269. From Point No.30 to Point No.31 the block boundary moved in North-West direction covering the Survey No. 269, 268, 270, 266, 265, 262, 181, 180, 178, 179, 176, 105, 566, 567, 102, 85, 84, 54, 53, 21, 20 and touching the CHHENDIPADA RF boundary at Point No.31. From Point No.31 to Point No.J it is common boundary between DHAURAKHAMAN village and CHHENDIPADA RF. From Point No.J to Point No.I the village boundary moved in South-East direction covering the Survey No.1, 2, 4, 558, 551, 7, 553, 552, 553, 34, 35, 36, 37, tri-junction point, 90, 91, 92, 95, 200, tri-junction point, 201, 202, 203, 219, 220, 221, tri-junction point, 222, and closing the boundary at Point No. I.

[F. No. 43015/18/2015-LA&IR]

RAM SHIROMANI SAROJ, Dy. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 5 फरवरी, 2020

का.आ. 175.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोचीन पोर्ट ट्रस्ट के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, ईरनाकुलम, कोचीन के पंचाट (संदर्भ सं. 16/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.02.2020 को प्राप्त हुआ था।

[सं. एल-35011 / 2 / 2008-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 5th February, 2020

S.O. 175.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, ERNAKULAM, COCHIN as shown in the Annexure, in the industrial dispute between the management of Cochin Port Trust and their workmen, received by the Central Government on 05.02.2020

[No. L-35011/2/2008-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ERNAKULAM**Present:** Shri. V.Vijaya Kumar, B. Sc, LLM, Presiding Officer(Thursday the 2nd day of January 2020, 12 Pausa 1941)**ID No. 16/2008**

Workman : 1. The General Manager
 Cochin Port Thozhilali Union (INTUC)
 Wellington Island
 Cochin -682003

By Adv. C. S. Yesudas

2. The General Secretary
 Cochin Port Staff Association (CPSA)
 Wellington Island
 Cochin -682009

3. The General Secretary
 Cochin Thuramuga Thozhilali Union (CITU)
 Wellington Island
 Cochin -682009

By Adv. B. N. Shiv Shankar

4. The General Secretary
 Cochin Port & Dock Employees Union (AITUC)
 Wellington Island
 Cochin -682009

By Adv. Aysha Youseff

5. The General Secretary
 Progressive Port & Dock Workers Union (TUCI)
 Maruthi Vilas, C. S. Road
 Ernakulam

Management : The Chairman
 Cochin Port Trust
 Wellington Island
 Cochin -682003

By M/s. B. S. Krishnan Associates

This case coming up for final hearing on 03.12.2019 and this Tribunal-cum-Labour Court on 02.01.2020 passed the following:

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-35011/2/2008-IR(B-II) dated 23.05.2008 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

“Whether the Memorandum of settlement dt. 07.09.2005 has become infructuous with the rank casual labourers enrolling themselves with the Head Load Workers’ Welfare Board at the Cochin Port Trust

and whether the management of Cochin Port Trust has violated the above mentioned Memorandum of settlement ? If so to what relief the workers are entitled to ?”

3. After receipt of the reference, notice was issued to the unions involved therein. The Cochin Port Thozhilali Union (INTUC) entered appearance and filed a claim statement. Later the General Secretary, Cochin Port & Dock Employees Union (AITUC) also entered appearance and filed a claim statement. While so, the management challenged the reference before the Hon’ble High Court of Kerala in W.P.(C) no.23900/2018 (T). The Hon’ble High Court in its judgment dt.21.06.2018 passed the following orders.

“As rightly pointed out by the learned Counsel of the Union that the main issue is in regard to the violation of Memorandum of settlement. In such circumstances, the challenge in regard to the reference must fail. The petitioner is also at liberty to raise the question on jurisdiction of the Tribunal before the Tribunal itself. All other issues are left open. Accordingly the Writ Petition is dismissed.”

After the disposal of the Writ Petition by the Hon’ble High Court, the matter was posted on 28.12.2018. The management was represented and there was no representation from the trade Unions. Hence it was decided to issue fresh notice to all the Unions. None of the Unions except Union no.3 responded to the summons. Hence all the unions except union no.3 were declared *ex parte*. The summons sent to union no.6 is returned since nobody claimed the same. The management filed written statement on which Union no.3 wanted to file rejoinder. Time was granted for Union no.3 to file rejoinder but they failed to do so even after adequate time was granted. The Counsel for the management submitted that he is not proposing oral evidence and the documents produced by him may be taken on record. Accordingly, the matter was taken for hearing on 03.12.2019. None of the Unions were represented and therefore it is decided to hear the Counsel for the management on merit.

4. According to the Unions, the rank casual workers were carrying out cargo handling work on piece rate basis under the Cochin Dock Labour Board (CDLB) since 1982. There were permanent workers with the Cochin Dock Labour Board and the rank casual workers were engaged along with the permanent workers. The vacancies that arose in Cochin Dock Labour Board were filled up by appointing 240 rank casual workers. As a result, 354 workers who became redundant were retrenched by Cochin Dock Labour Board paying compensation. They were advised to register themselves with the local employment exchange for the purpose of engaging them on Port duties in future. After the efforts made by the trade Unions, the Cochin Port Trust agreed to utilize the services of rank casuals on a need basis for cargo handling operations. In order to regularize the above proposal, the Port Management and the Unions initiated a conciliation proceedings and ultimately a Sec. 12(3) settlement were signed on 07.09.2005. As per the above settlement, a private pool of rank casuals was formed in order to temporarily solve the problem of short supply of permanent gangs till a final decision is taken by the Port Trust regarding the running of above pool on permanent basis. There was a specific Clause in Sec 12(3) settlement to constitute a Committee to evolve a running procedure for rank casual workers’ pool. But the management has not taken any action in that direction. The rank casuals were not provided with the work. While so a meeting was convened on 06.11.2006 at the instance of the State Ministers for Industry and Labour and it was decided to enroll all the workers with the Kerala Head Load Workers’ Welfare Board. The Management also issued a Circular dt.23.12.2006 informing that the service of the workers registered under Kerala Head Load Workers Welfare Board alone will be utilized in the loading and unloading work in the Port area from January 2007 onwards. The present stand taken by the management that by virtue of the registration the Welfare Board has become the employer of the rank casual workers is absolutely false. The 12.3 settlement continued to be in co-operation till it varied by another settlement and so it is binding on the Port Trust as long as it remains in force. Therefore it cannot be said that the 12.3 settlement has become infructuous by the enrollment of rank casual workers with the Welfare Board.

5. The Management filed written statement denying the above allegations. According to the management this Tribunal has no jurisdiction to entertain the dispute as the appropriate Govt for the present dispute is the State Govt and not the Central Govt. It is also pointed out by the management that the industrial dispute is bad for nonjoinder of necessary parties as Stevedores were not made parties to the dispute.

6. Cochin Port is a major port constituted under Major Port Trust Act, 1963. The Dock Labour Board (DLB) in the year 1992, took a policy decision to regularize the services of 210 rank casual workers who had worked with them, 247 to 397 shifts, with the approval of the Govt of India. The remaining casual workers were offered compensation for discontinuing their engagement as rank casuals in Dock Labour Board. On receipt of compensation they gave an undertaking that they would not claim any future employment or benefits from DLB. Inspite of the undertaking, they approached the Hon’ble High Court of Kerala. The Hon’ble High Court of Kerala while dismissing the writ petition held that the management has no obligation to provide employment to rank casuals. The Hon’ble High Court however made an observation that their case would be considered sympathetically if their names were sponsored by the employment exchange for future appointment to

permanent post. During 2004, the rank casuals whose services were discontinued from DLB as stated above, demanded work of cargo handling operations. At the intervention of the Asst. Labour Commissioner (Central) the parties entered into a Sec 12.3 settlement dt.07.09.2005. As per that settlement the role of the Management is only that of a facilitator. To be more specific, a pool of rank casuals shall be formed and run by Stevedores. As per the settlement, the wages and other terms of employment shall be settled between Stevedores and Unions and subsequently a settlement was signed on 08.09.2005 between the Unions and the Stevedores.

7. In the year 2007, Govt of Kerala by notification dt.01.01.2007, constituted the Kerala Head Load Workers Welfare Board in the Port area for the implementation of Head Load Workers Scheme and all the rank casuals were registered in the Committee under Para 6A of the Kerala Head Load Workers Scheme. On such registration, wages and other service condition of workers come to be governed by the provisions of Kerala Head Load Workers Act, 1978 and the rules framed thereunder. In view of the above, the settlement dt.07.09.2005 superceded by operation of law and the Committee under the Scheme became the employer of the registered workers. With the introduction of the Scheme, any dispute relating to condition of service of any of the registered workers could be settled only U/s 21 of Kerala Head Load Workers Act, 1978. In the meanwhile, the Progressive Port & Dock Workers Union filed a Writ Petition no. 18259/2007 before the Hon'ble High Court of Kerala claiming to represent casual Stevedores mazdoors who are admittedly registered under Kerala Head Load Workers Scheme, 1983. The grievance of the union was that Conciliation Officer has not taken any action on the complaint filed by them alleging non implementation of the settlement dt.07.09.2005. The Hon'ble High Court directed the Asst. Labour Commissioner (Central) to initiate conciliation proceedings and complete within a time frame of 6 months. The Management filed a review petition. The same was dismissed holding that it would be open to any of the parties to raise such contentions in which even, the question also shall be decided by the 2nd respondent. The 2nd respondent, the Conciliation Officer initiated the process and finally held that the appropriate Govt under the ID Act in relation to a major port is Central Govt and not the State Govt. This is in contradiction to an earlier stand taken by the Conciliation Officer in a petition filed by Cochin Thuramugathozhilali Union.

8. The 1st part of the reference is whether the settlement dt.07.09.2005 became infructuous with the rank casual labours enrolling themselves with the Head Load Workers Welfare Board at Cochin Port? As stated earlier, from 01.01.2007, after the Govt of Kerala constituted the Kerala Head Load Workers Welfare Board in the Port area for implementation of Head Load Workers Scheme, all the rank casuals were registered with the Committee under Para 6(a) of the Scheme. On such registration, the wages and service condition of the workers are guided by the provisions of Kerala Head Load Workers Act, 1978 and the rules framed thereunder. Hence the settlement dt.07.09.2005 superceded by operation of law and the Committee became the employer of the registered workers. Hence the settlement dt.07.09.2005 has become infructuous. All the disputes relating to conditions of service will have to be handled by the Conciliation Officer as per Sec 21 of Kerala Head Load Workers Act.

9. With regard to the 2nd part of the reference, it is pointed out that the Management has only limited role of facilitation regarding the implementation of the settlement. The settlement envisages an adhoc arrangement of engaging rank casual workers by the stevedores on need basis. The settlement also clearly states that the various conditions and the terms and obligations will be decided by the Union and the Stevedores. The Stevedores who were signatory to the settlement, engaged M/s. Hash & Company for operating and running the said rank casual workers' pool. The rank casual workers started demanding illegal financial benefits and they informed the same to Cochin Port Thozhilali Union (INTUC) and Cochin Port Staff Association vide their letter dt.14.03.2006. M/s. Kinship Services India Pvt. Ltd. who is one of the main Stevedores and signatory to settlement vide their letter dt.27.12.2005 informed the Port management that the workers are more interested in extorting money rather than earning their daily wages. The above acts on the part of the workers is violation of the terms of settlement. The Cochin Port Staff Association vide their letter dt.19.12.2005 requested the Management for resolving the rank casual pool. The additional demands by various Unions were in clear violation of the settlement. The settlement could not be implemented because of the non co-operation of the Unions. Since the Stevedores who were required to implement the settlement were not party to the proceedings, the claim of the Unions cannot be adjudicated for non-joinder of parties.

10. On completion of pleadings, the parties to the dispute were provided an opportunity to adduce evidence, if any. All the Unions except Union no.3 remained ex parte. The Management produced 19 documents which were taken on record.

11. On the basis of pleadings, the following issues are required to be decided in this dispute.

1. Whether the industrial dispute is maintainable?

2. Whether the memorandum of settlement dt.07.09.2005 has become infructuous with the rank casual labours enrolling themselves with the Head Load Workers Welfare Board at Cochin Port Trust?
3. Whether the management of Cochin Port Trust has violated the memorandum of settlement dt.07.09.2005?
4. What is the relief available to the workers?

12. Issue No. 1

According to the management, Govt of Kerala notified the Port area in Cochin under Kerala Head Load Workers Act, 1978. All the workers under various trade Unions who are party to this proceedings registered themselves with the Committee notified under the Act and rules thereunder. Once a head load worker is registered under the Act and rules thereunder, the wages and other service conditions of the said worker are guided by the provisions of Kerala Head Load Workers Act, 1978 and rules framed thereunder. Under the Scheme, the Committee constituted under the Act becomes the employer and any dispute relating to conditions of service of any registered worker could be settled only as per Sec 21 of Kerala Head Load Workers Act, before an Authority notified by the State Govt. According to the Counsel for the management, in view of the above provisions and the circumstances, the State Govt is the appropriate Govt for handling a dispute under the Head Load Workers Act. On a perusal of the reference received from the Ministry of Labour, it is seen that the main issue to be decided is whether the Memorandum of settlement dt.07.09.2005 between the Unions and the Management and the Asst. Labour Commissioner (Central) U/s 12.3 of ID Act has become infructuous and whether the management of Cochin Port Trust has violated the above mentioned Memorandum of settlement. The reference is not regarding any relief claimed by the Unions under Kerala Head Load Workers Act and it is only an incidental reference that whether the Sec 12.3 settlement has become infructuous in view of the employees getting registration under Kerala Head Load Workers Act. Hence the basic question to be decided in this reference is whether the Section 12.3 settlement has become infructuous and whether the Management has violated the settlement dt.07.09.2005.

13. The factual and legal position being so, the above reference can only be answered by this Tribunal since the reference is not with regard to the service condition or terms of benefit under the Kerala Head Load Workers Act. The conciliatory proceedings U/s 21 of the said Act cannot be invoked to answer the above reference.

Hence issue no.1 is answered in favour of the Unions and against the Management.

14. Issue No. 2

The rank casual workers were originally engaged by Dock Labour Board. In the year 1992, DLB decided to regularize the service of 210 rank casual workers in their service on the basis of the number of shifts that these employees had done. The remaining rank casual workers who worked less number of shifts are offered compensation on a condition that they would not claim any future employment or benefits from DLB. Inspite of the above undertaking they approached the Hon'ble High Court of Kerala and the Hon'ble High Court dismissed their claim, however directed the Management to look into their case sympathetically in case their names are recommended by the employment exchange. The rank casual workers through their Union approached the Management demanding work of cargo handling operation. After several discussions and intervention of Asst. Labour Commissioner (Central), a settlement U/s 12.3 of the ID Act was signed on 07.09.2005. On a perusal of the settlement, it is seen that the settlement is required to be implemented by the Stevedores and the Unions and the role of the Management in the settlement is very limited. On the basis of the above settlement the Unions and the Stevedores entered into another settlement dt.08.09.2005 regarding the terms and conditions of their engagement. In the year 2007, Govt of Kerala decided to extend the Kerala Head Load Workers Scheme to the Port area at Cochin on the basis of a decision taken in a meeting headed by the state Ministers of Industry and Labour in which all the trade Unions and the Management participated. After the registration of the rank casual workers under Kerala Head Load Workers Welfare Board, the Management issued a Circular dt.23.12.2006 that from January 2007 onwards the loading and unloading work in the Port area will be entrusted only to workers who are registered under Kerala Head Load Workers Welfare Board. According to the Counsel for the Management, the settlement dt.07.09.2005 superceded by the operation of law and the Committee under the Head Load Workers Act became the employer of the registered workers. According to him, the settlement dt.07.09.2005 became infructuous in view of the registration of the workers under Kerala Head Load Workers Scheme and the dispute if any is required to be resolved U/s 21 of Kerala Head Load Workers Act. The provisions of Kerala Head Load Workers Act, 1978 came into force in the whole of the State of Kerala in respect of all establishment except those establishments owned or controlled by the Central Govt. as per notification no. 15401E2/81/LBR dt.19.5.1981. Hence it is seen that an establishment

owned or controlled by the Central Govt, is specifically excluded from the provisions of the Act. The Hon'ble High Court of Kerala in **Hindustan Latex Employees Welfare Society Vs Trivandrum District Head Load & General Workers Union**, 2010(4) KLT 391 (DB) held that the Central Govt undertaking permitting part of its activities to be carried out by an Employees Welfare Society does not cease to be an establishment under the control of Central Govt, comes within the exemption of the notification. The Hon'ble High Court also observed that merely because of an application for registration was made or registered head load workers were engaged for a brief period, it cannot be said that the exempted undertaking has waived its right under the notification. In view of above, the legal position is very clear that a Central Govt undertaking or an undertaking or an establishment under the control of the Central Govt is excluded from the provisions of the Kerala Head Load Workers Act and simply because some of the rank casual labours were enrolled under the Head Load Workers Scheme, the Management cannot plead that a settlement made U/s 12.3 of the ID Act has become infructuous. In the present case, the settlement is dt. 07.09.2005 and as is evident the Management indirectly compelled the workers to come under Head Load Workers Welfare Scheme. The rank casual workers enrolled themselves under the Scheme on the basis of a Circular issued by the Management since they were not otherwise getting employment in the management establishment. Hence it is not possible to accept the claim of the management that the Memorandum of settlement dt. 07.09.2005 has become infructuous because the rank casual workers enrolled themselves with Head Load Workers' Welfare Board.

Hence issue no.2 is decided in favour of the Unions and against the Management.

15. Issue No. 3 & 4

Having deciding that the settlement dt. 07.09.2005 has not become infructuous just because the rank casual labours enrolled themselves with Head Load Workers Board, the only question is that remains to be adjudicated is whether the management of Cochin Port has violated the Memorandum of settlement dt. 07.09.2005. As already pointed out, the Management moved the Hon'ble High Court of Kerala in W.P.(C) no. 23900/2008, challenging the reference made by the Govt of India to this Tribunal in the industrial dispute. While disposing off the above Writ Petition vide order dt. 21.06.2018 the Hon'ble High Court observed that;

“All the points urged by the petitioner are in fact, need meritorious consideration while the dispute is adjudicated by the Tribunal. As rightly pointed out by the learned Counsel for the Union that the main issue is in regard to the violation of Memorandum of settlement. In such circumstances the challenge in regard to the reference must fail.”

Hence it can be seen that the main issue to be decided is whether the Management of Cochin Port Trust has violated the Memorandum of settlement dt. 07.09.2005. The learned Counsel for the Management elaborately argued on the Sec 12.3 settlement signed between the management, the trade Unions and the Regional Labour Commissioner (C). According to the Counsel the responsibility of the management under the settlement is very limited. Clause 1 of the settlement states that a pool of rank casual workers numbering 354, from the retrenched rank casual workers of erstwhile Dock Labour Board shall be formed and run by the affected Stevedores or any agency nominated by them till a final decision is taken by the Port Trust regarding the running of the above pool. As per Clause 2, the Port Trust may permit the engagement of gangs by Stevedores from rank casual workers pool formed under Clause 1 of the settlement. As per Clause 5, the structure of wage payable and other service conditions for the rank casual workers pool shall be decided by mutual agreement with Stevedores who manage the private pool and Unions signatory to the settlement. As per Clause 6, rank casual workers pool will be temporarily run by the Stevedores. As per Clause 7, the Stevedores shall be responsible for making appropriate payments to the rank casual workers pool. The equipments required shall be supplied by the Port Trust. As per Clause 12, in order to evolve a permanent running procedure for rank casual workers pool, study will be conducted by a Committee consisting of one member each from the above four Unions and a representative of the Port management, facilities for which will be presided by the Port Trust. As per Clause 15, the rank casual workers are to abide by the rules and regulations regarding cargo handling and they are bound by instructions given by supervisory staff and officers of Cochin Port Trust and as per Clause 18, the settlement resolves all the claim issues relating to rank casual workers in toto and no more addition by any Union shall be raised and entertained in this regard. This exhausts the list of rank casual worker of Cochin pool. On a perusal of the above settlement and the clauses discussed above, it is very clear that the role of the management is very limited in their operations. The learned Counsel for the management strenuously argued that the non-jointer of Stevedores as a party to the proceedings will be detrimental to the interest of the Unions in the adjudication of this dispute. It is seen that the claim of the learned Counsel for the management is fully correct as all the main terms of settlement are required to be implemented by the Stevedores and the relief that can be claimed from the Stevedores cannot be claimed from the Management as per the settlement. The role of the Management in the settlement is confined to Clause 1, 2, 9 and 12 of the settlement. As already pointed out, the Management shall permit the engagement of gangs by the Stevedores from rank casual workers pool for ship

loading and unloading work and they shall provide the equipments available for the Port operation for this purpose. The other obligation cast upon the Management is to constitute a Committee to evolve a permanent running procedure for rank casual workers pool. According to the Counsel for the Management, they formed a Committee vide Circular dt.21.02.2006. However the work of the Committee was not pursued as rank casual workers resorted to various arm twisting methods and created problems in Port operations causing serious damages to the Port interest in violation of the terms of settlement. According to the learned Counsel for the Management, on 13.03.2006 the rank casual workers who were engaged to work, refused to work, after taking the booking and demanded additional fringe benefits as enjoyed by the regular employees of the Management and resorted to lightening strike. Inspite of the interferences by the Traffic Manager of the Management, the workers refused to work. This matter was brought to the notice of the Secretary of Cochin Port Thozhilali Union vide letter dt.16.03.2006. M/s. Hash& Company which was entrusted with the responsibility of handling the rank casual workers pool reported the above fact vide a letter dt.14.03.2006. This action on the part of the Unions clearly violated Clause 15 of the settlement. The Cochin Port Staff Association which is one of the signatory to the settlement vide their letter dt.19.12.2005 requested the Traffic Manager of the management for desolving the rank casual pool. Cochin Port Thozhilali Union who is a signatory to the settlement raised certain demands vide their letter dt.28.02.2006 and Cochin Port & Dock Employees Union vide their letter dt.02.03.2006 raised similar demands. These demands are not part of the settlement and is in clear violation of the same. According to the learned Counsel for the Management, the settlement broke down completely because of the non co-operation from the side of the Unions and also because of the unethical demands raised by them in violation of the terms of settlement. According to him since the first part of the settlement could not be implemented there was no necessity to takeup a further arrangement for permanent running procedure of the rank casual workers pool. However as required under Clause 12 of the settlement, they have already constituted a Committee for conducting this study. It is not clear whether the Committee has proceeded with the study as required under the settlement. If not the only action that is required to be taken by the Management is to complete the study as per the terms of settlement. It is difficult to accept the argument of the learned Counsel for the Management that since the 1st part of the settlement failed there is no need to takeup the 2nd part of the settlement for creating a permanent running procedure for the rank casual workers pool. None of the other reliefs claimed by the Unions can be adjudicated in this proceedings as the Stevedores who are required to implement the major part of the settlement is not party to the proceedings.

16. As already discussed above, the Management of Cochin Port Trust has violated the Clause 12 of Memorandum of settlement dt.07.09.2005 to the extended the study envisaged for a permanent running arrangement for the rank casual pool was not takenup and completed as required therein.

17. The Management has already constituted a Committee as claimed by them for the purpose of evolving a permanent running arrangement for the rank casual pool of workers. The Management shall facilitate to complete the study and evolve a permanent system for engaging the rank casual workers pool.

18. Hence the reference is answered holding that the Memorandum of settlement dt.07.09.2005 has not become infructuous with the rank casual labours enrolling themselves with the Head Load Workers Welfare Board at Cochin Port Trust and the Management of Cochin Port Trust has violated in a limited way the term of settlement in Clause 12 to facilitate a study for evolving a permanent system for engaging the rank casual workers pool. The Management shall therefore ensure that the process initiated under clause 12 shall be taken to its logical conclusion at the earliest.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 2nd day of January, 2020.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the Workman	:	Nil
Witness for the Management	:	Nil
Exhibits for the Workman	:	Nil

Exhibits for the Management:-

1. True copy of the letter of the Govt of India, Ministry of Transport dt.19.10.1992
2. True copy of the extract of Resolution No.60 of the Board of Trustees of Cochin Port in the meeting No.7/1992 on 30.10.1992
3. True copy of the settlement dt.06.06.1994
4. True copy of the Undertaking given by the casual employee of Cochin Dock Labour Board
5. True copy of the judgment of the Hon'ble High Court of Kerala dt.19.10.2000 in O.P.No. 29492/2000
6. True copy of Memorandum of settlement dt.07.09.2005
7. True copy of Memorandum of settlement dt.08.09.2005
8. True copy of the letter of the Asst. Labour Commissioner(C) dt.14.11.2006
9. True copy of the statement submitted by the Management of Cochin Port Trust dt.30.08.2007 before the Asst. Labour Commissioner(C) Ernakulam
10. True copy of judgment of the Hon'ble High Court of Kerala dt.14.06.2007 in W.P.(C) No.18259/2007
11. True copy of the order of the Hon'ble High Court of Kerala dt.06.07.2007 in Revision Petition No.616/2007 against the Judgment in W.P.(C) no.18259/2007
12. True copy of the judgment of the Hon'ble High Court of Kerala dt.24.10.2011 in W.P.(C) No. 26574/2004
13. True copy of the Order of the Hon'ble High Court of Kerala dt.08.08.2008 in W.P.(C) no.23900/2008
14. True copy of the judgment of the Hon'ble High Court of Kerala dt.21.06.2018 in W.P.(C) no.23900/2008
15. True copies of letter of M/s.Hash& Company dt.14.03.2006 addressed to the Unions, with copy of the Addl.Traffic Manager of Management
16. True copy of letter of M/s.Kinship Services (India) Pvt Ltd dt.27.12.2005 addressed to the Traffic Manager of Management
17. True copy of the letter of Cochin Port Staff Association dt.19.12.2005 addressed to the Traffic Manager of the Management
18. True copy of the letter of Cochin Port Thozhilali Union(INTUC) dt.28.02.2006 addressed to the Traffic Manager of the Management
19. True copy of the letter of Cochin Port & Dock Employees Union (AITUC) dt.02.03.2006 addressed to the Traffic Manager of the Management.

नई दिल्ली, 6 फरवरी, 2020

का.आ. 176.—ओद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक आफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 63/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.02.2020 को प्राप्त हुआ था।

[सं. एल-12011/24/2011-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 6th February, 2020

S.O. 176.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 63/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Union Bank of India, and their workmen, received by the Central Government on 06.02.2020.

[No. L-12011/24/2011-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPURNO. CGIT/LC/R/63/2012**Present:** P. K. Srivastava, H.J.S..(Retd)

The General Secretary
 Dainik Vetal Bhogi Bank Karmachari Sanghthan
 F-1, Karambhoomi, Tripti Vihar,
 Infront of Engineering College
 Ujjain (M.P.)

...Workman

Versus

The Managing Director
 Union Bank of India, Head Office
 239, Vidhan Bhawan Marg,
 Mumbai

...Management

AWARD**(Passed on this 13th day of JANUARY-2020)**

1. As per letter dated 19-4-2012 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12011/24/2011-IR(B-II). The dispute under reference relates to:

“Whether the demand of the Union for payment of bonus for the period from 21-7-03 to 20-7-07 in respect of Sh. Sandeep Yadav is just and proper? If so, what relief the workman concerned is entitled to ?.”

2. After registering the case on the basis of reference, notices were sent to the parties.

3. The case of the workman as stated in his statement of claim is that the applicant/workman SandeepYadav was appointed as a daily wager on daily wages of Rs.50/- per day by the then Branch Manager of the branch on 21-8-2003. He remained engaged till 20-7-2007 and worked for more than 240 days in every year including the year preceding the date of his dis-engagement. He was dis-engaged without notice or compensation, which is against law. He raised a dispute before the labour Commissioner. After failure of conciliation, the reference was sent to this Court for adjudication. According to the workman, he is entitled to bonus as per The Payment of Bonus Act,1965 which has been wrongly denied

4. According to the case of the Management, there is no Industrial Dispute defined in Section 2(K) and 2(I) of the Act. The workman was never engaged by the bank as a Peon as claimed by him, hence there is no question of termination of his services. He was casually engaged for cleaning of the Branch every day in a month as and when required to work for 30-40 minutes and was paid wages for this. He never remained in continuous engagement of the Bank for more than 240 days or more in any year including the year preceding the date of his termination, hence he is not entitled to bonus, accordingly it has been prayed that the reference be answered against the workman.

5. In evidence, the workman has examined himself on oath. He has proved Exhibit W-1, letter issued by Management in RTI Act and seven vouchers with RTI letters.

6. The Management has examined Shri Chandramani Naswa, Chief Manager of Bank.

7. The workman has filed a written argument and the management has also filed written arguments. I have gone through the written arguments submitted by both the parties and the records as well. Following points arise for determination:-

1. **Whether the workman is held entitled to payment of bonus as claimed by him?**
2. **If so, what relief the workman concerned is entitled to ?**

8. The following provisions of Section 8 of the The Payment of Bonus Act,1965 requires to be enumerated as under:-

8. Eligibility of bonus:- Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.

9. Reference is the issue for determination in the case in hand.

10. ISSUE NO. 1:-

In the light of above principles of law the points which remains to be decided are firstly whether the workman was actually engaged as a peon by Bank as a daily wager or he was simply engaged just for cleaning for one or two hours on payment basis as claimed by the Management. Secondly whether he remained in continuous engagement of Bank for a period of more than 30 days in the year in question.

11. The respective stand of the parties has been detailed earlier. The case of the workman is that he was paid wages in the name of non-existing persons on bogus bills also whereas the work was taken from him i.e. to say that the work was done by him and payment was made to him in different names. The burden was on workman to prove this fact. The photocopy of documents regarding vouchers, though denied by Management but can be read in evidence against the workman because he has filed it and has relied on it. There are eleven cash vouchers which relate to 5-8-2006 to 29-9-2006. Out of these eleven cash vouchers, vouchers dated 12-8-2006, 19-8-2006, 5-8-2006 and 29-9-2006 have been paid to persons other than the present workman. The workman has interestingly filed a list of 56 persons in whose name he was paid the wages, though the Management has denied this list. The RTI letter dated 31-10-2012 goes to show that within the period of 5-8-2006 to 29-9-2006, total 10 payments were made to the applicant/workman which is of total Rs.2050/-. Though the workman has stated on oath that he remained engaged for more than 240 days in every year and the year preceding the date of his dis-engagement and received payment in the name of factious persons, in absence of documents supporting the statement the whole statement, particularly his statement that he was paid in the name of factious persons, makes his whole statement shoddy and no relevance can be placed on his such statement.

12. On the contrary, the management witness has specifically denied that the workman was never engaged as a daily wager for peon job of bank and has stated that there is recruitment process for peon job in the bank. A comparative study of statement of workman along with documents as referred to above proves that at least he was engaged for more than 30 days in the year 2006, hence he is held entitled to bonus as per Section 8 of The Payment of Bonus Act,1965 for the year 2006. **Issue No.1 is answered accordingly.**

13. ISSUE NO. 2:-

In the light of finding recorded in Issue No.1, the workman is held entitled to bonus for the year 2006.

Issue No. 2 is answered accordingly.

14. On the basis of the above discussion, following award is passed:-

A. The workman is held entitled for bonus for the year-2006 .

P. K. SRIVASTAVA, Presiding Officer

DATE: 13.1.2020

नई दिल्ली, 6 फरवरी, 2020

का.आ. 177.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक आफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 64/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.02.2020 को प्राप्त हुआ था।

[सं. एल-12011/12/2011-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 6th February, 2020

S.O. 177.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 64/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Union Bank of India, and their workmen, received by the Central Government on 06.02.2020.

[No. L-12011/12/2011-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/64/2012

Present: P. K. Srivastava H.J.S..(Retd)

The General Secretary
DainikVetan Bhogi Bank Karmachari Sangathan
Central Office, F-1, Karmbhoomi,
Tripti Bihar, Opp. Engineering College
Ujjain (M.P.)

... Workman

Versus

The General Manager
Union Bank of India,
Regional Office, 1513/1/1, Jail Road,
Arera Hills,
Bhopal (M.P.)

... Management

AWARD

(Passed on this 13th day of JANUARY-2020)

1. As per letter dated 18-4-2012 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12011/12/2011-IR(B-II). The dispute under reference relates to:

“Whether the applicant Shri Sandeep Yadav is entitled for pay scale as per Bipartite Settlement between the Union and the Management of Union Bank of India? If so, what relief the workman is entitled to? .”

2. After registering the case on the basis of reference, notices were sent to the parties.

3. The case of the workman as stated in his statement of claim is that during the period of 21-7-2003 to 20-7-2007 the Bi-Partite Settlement No.8 and No.9 were inforce. Further that the workman is entitled to the scale as mentioned in the work of Bipartite Settlement accordingly. The workman has thus prayed for being awarded the difference of pay as mentioned above with interest.

4. The case of Management is that Bipartite Settlement does not apply to daily wage employees it applied to regular employees, hence the workman is not entitled to relief claimed. Furthermore, the Management has denied that the workman was engaged as a daily wager on the post of peon. The case of Management is that he was simply engaged as a cleaner for half an hour daily for some period for which he was paid. Both the sides have filed documentary evidence and statements on oath.

5. The workman has filed a written argument and the management has also filed a written argument. I have gone through the written arguments submitted by both the parties and the records as well.

6. On perusal of the record in the light of rival arguments reveals that the issue to be determined is whether Provisions of Bi-Partite apply to workman who are not on regular posts or who are not appointed against regular posts.

7. There is nothing in Bi-Partite Settlement which provides payment of pay scales for part time daily rated workers, hence the workman Sandeep Yadav is not entitled to any pay case as per Bi-Partite Settlement between Union and Management. Accordingly he is held entitled to no relief.

8. On the basis of the above discussion, following award is passed:-

A. The action of the management in holding workman-SandeepYadav not entitled for pay scale as per Bipartite Settlement between the Union and the Management of Union Bank of India is held to be justified and legal.

B. The workman is held entitled to no relief.

P. K. SRIVASTAVA, Presiding Officer

DATE: 13.1.2020

नई दिल्ली, 6 फरवरी, 2020

का.आ. 178.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 51/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.02.2020 को प्राप्त हुआ था।

[सं. एल-12011/2/2011-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 6th February, 2020

S.O. 178.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 51/2011) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Union Bank of India, and their workmen, received by the Central Government on 06.02.2020.

[No. L-12011/2/2011-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/51/2011

Present: P. K. Srivastava, H.J.S. (Retd)

The General Secretary
Dajnik Vetan Bhogi Bank Karmachari Sangathan
F-1, TriptiVihar, Opp. Engineering College,
Ujjain (M.P.)

... Workman

Versus

The General Manager,
Union Bank of India, Regional Office,
Union Bank Bhawan, 1513/1/1, Arera Hills,
Bhopal (M.P.)

... Management

AWARD

(Passed on this 13th day of JANUARY-2020)

1. As per letter dated 6-6-2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No. L-12011/2/2011-IR(B-II). The dispute under reference relates to:

“Whether the services of Shri SandeepYadav were terminated W.E.F. 20/7/2007 without following the provisions of law in an illegal manner? What relief the workman is entitled to? .”

2. After registering the case on the basis of reference, notices were sent to the parties.

3. The case of the workman as stated in his statement of claim is that the applicant/workman SandeepYadav was appointed as a daily wager on daily wages of Rs.50/- per day by the then Branch Manager of the branch on 21-8-2003. He remained engaged till 20-7-2007 and worked for more than 240 days in every year including the year preceding the date of his dis-engagement. He was dis-engaged without notice or

compensation, which is against law. He raised a dispute before the labour Commissioner. After failure of conciliation, the reference was sent to this Court for adjudication. According to the workman, his disengagement is violative of Section 25(G) and 25(M) of the Act. The workman has accordingly prayed for his reinstatement with all consequential service benefits.

4. According to the case of the Management, there is no Industrial Dispute defined in Section 2(K) and 2(I) of the Act. The workman was never engaged by the bank as a Peon as claimed by him, hence there is no question of termination of his services. He was casually engaged for cleaning of the Branch every day in a month as and when required to work for 30-40 minutes and was paid wages for this. He never remained in continuous engagement of the Bank for more than 240 days or more in any year including the year preceding the date of his termination, hence his dis-engagement is not legal, accordingly it has been prayed that the reference be answered against the workman.

5. In evidence, the workman has examined himself on oath. He has proved Exhibit W-1, letter issued by Management in RTI Act and seven vouchers with RTI letters.

6. The Management has examined Shri Chandramani Naswa, Chief Manager of Bank.

7. The workman has filed a written argument and the management has also filed written arguments. I have gone through the written arguments submitted by both the parties and the records as well. Following points arise for determination:-

1. Whether the dis-engagement of workman from 20-7-2007 is legal and justified?.

2. If not, whether the workman is entitled to any relief?.

8. The following provisions of law is required to be enumerated here:-

1.2[(oo) “retrenchment” means the termination by the employer of the service of a workman for any any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

2.2 [(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

3. Section 25-F-Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice: 1[***] (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

4.25G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

25M. Prohibition of lay-off.- (1) No workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment to which this Chapter applies shall be laid-off by his employer except 3[with the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority), obtained on an application made in this behalf, unless such lay-off is due to shortage of power or to natural calamity, and in the case of a mine, such lay-off is due also to fire, flood, excess of inflammable gas or explosion]. 4|(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended lay-off and a copy

of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where the workmen (other than badli workmen or casual workmen) of an industrial establishment, being a mine, have been laid-off under sub-section (1) for reasons of fire, flood or excess of inflammable gas or explosion, the employer, in relation to such establishment, shall, within a period of thirty days from the date of commencement, of such lay-off, apply, in the prescribed manner, to the appropriate Government or the specified authority for permission to continue the lay-off. (4) Where an application for permission under sub-section (1) or subsection (3) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such lay-off, may, having regard to the genuineness and adequacy of the reasons for such lay-off, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen. (5) Where an application for permission under sub-section (1) or subsection (3) has been made and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days. (6) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of subsection (7), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order. (7) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (4) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference. (8) Where no application for permission under sub-section (1) is made, or where no application for permission under sub-section (3) is made within the period specified therein, or where the permission for any lay-off has been refused, such lay-off shall be deemed to be illegal from the date on which the workmen had been laid-off and the workmen shall be entitled to all the benefits under any law for the time being in force as if they had not been laid-off. (9) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1), or, as the case may be, sub-section (3) shall not apply in relation to such establishment for such period as may be specified in the order.]

5. [25N. Conditions precedent to retrenchment of workmen.—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,— (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf. (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner. (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen. (4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from

the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days. (5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order. 1. Sub-section (6) re-numbered as sub-section (10) by Act 49 of 1984, s. 4 (w.e.f. 18-8-1984). 2. Subs. by s. 5, ibid., for section 25N (w.e.f. 18-8-1984). 33 (6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference. (7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him. (8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct, that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order. (9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.]

Industrial Dispute Central Rules-1957

6-76-Notice of retrenchment.—If any employer desires to retrench any workman employed in his industrial establishment who has been in continuous service 1 Subs. by S.O. 2485, dated 20th May, 1985. 2 Subs. by S.O. 2485, dated 20th May, 1985. 3 Subs. by G.S.R. 289, dated 2nd March, 1982 (w.e.f. 13-3-1982). 4 Subs. by S.O. 2485, dated 20th May, 1985. The Industrial Disputes (Central) Rules, 1957 for not less than one year under him (hereinafter referred to as 'workman' in this rule and in rules 77 and 78), he shall give notice of such retrenchment as in Form P to the Central Government, the Regional Labour Commissioner (Central) and Assistant Labour Commissioner (Central) and the Employment Exchange concerned and such notice shall be served on that Government, the Regional Labour Commissioner (Central), the Assistant Labour Commissioner (Central), and the Employment Exchange concerned by registered post in the following manner:— (a) where notice is given to the workman, notice of retrenchment shall be sent within three days from the date on which notice is given to the workman; (b) where no notice is given to the workman and he is paid one month's wages in lieu thereof, notice of retrenchment shall be sent within three days from the date on which such wages are paid; and (c) where retrenchment is carried out under an agreement which specifies a date for the termination of service, notice of retrenchment shall be sent so as to reach the Central Government, the Regional Labour Commissioner (Central), the Assistant Labour Commissioner (Central), and the Employment Exchange concerned, at least one month before such date: Provided that if the date of termination of service agreed upon is within 30 days of the agreement, the notice of retrenchment shall be sent to the Central Government, the Regional Labour Commissioner (Central), the Assistant Commissioner (Central), and the Employment Exchange concerned, within 3 days of the agreement.

9. ISSUE NO. 1:-

In the light of above principles of law the points which remains to be decided are firstly whether the workman was actually engaged as a peon by Bank as a daily wager or he was simply engaged just for cleaning for one or two hours on payment basis as claimed by the Management. Secondly whether he remained in continuous engagement of Bank for a period of more than 240 days in the year preceding the date of his dis-engagement.

10. The respective stand of the parties has been detailed earlier. The case of the workman is that he was paid wages in the name of non-existing persons on bogus bills also whereas the work was taken from him i.e. to say that the work was done by him and payment was made to him in different names. The burden was on

workman to prove this fact. The photocopy of documents regarding vouchers, though denied by Management but can be read in evidence against the workman because he has filed it and has relied on it. There are eleven cash vouchers which relate to 5-8-2006 to 29-9-2006. Out of these eleven cash vouchers, vouchers dated 12-8-2006, 19-8-2006, 5-8-2006 and 29-9-2006 have been paid to persons other than the present workman. The workman has interestingly filed a list of 56 persons in whose name he was paid the wages, though the Management has denied this list. The RTI letter dated 31-10-2012 goes to show that within the period of 5-8-2006 to 29-9-2006, total 10 payments were made to the applicant/workman which is of total Rs.2050/- . Though the workman has stated on oath that he remained engaged for more than 240 days in every year and the year preceding the date of his dis-engagement and received payment in the name of factious persons, in absence of documents supporting the statement the whole statement, particularly his statement that he was paid in the name of factious persons, makes his whole statement shoddy and no relevance can be placed on his such statement.

11. On the contrary, the management witness has specifically denied that the workman was never engaged as a daily wager for peon job of bank and has stated that there is recruitment process for peon job in the bank, hence a comparative study of statements on oath and the documents leads to record a finding that the factum of continuous engagement of 240 days or more in the year preceding the date of his engagement could not be proved in the case in hand . Accordingly the dis-engagement of the present workman cannot be said to be against law.

Issue No. 1 is answered accordingly.

12. **ISSUE NO.2:-**

In the light of finding recorded in Issue No.1, the workman is held entitled to no relief.

Issue No. 2 is answered accordingly.

13. On the basis of the above discussion, following award is passed:-

- A. The action of the management in terminating the services of Shri Sandeep Yadav w.e.f 20/7/2007 cannot be said to be illegal and unjustified.**
- B. The workman is held entitled to no relief.**

P. K. SRIVASTAVA, Presiding Officer

DATE: 13.1.2020+

नई दिल्ली, 6 फरवरी, 2020

का.आ. 179.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 7/2012 एवं 138/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.02.2020 को प्राप्त हुआ था।

[सं. एल-12012/26/2012-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 6th February, 2020

S.O. 179.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 7/2012 & 138/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Union Bank of India, and their workmen, received by the Central Government on 06.02.2020.

[No. L-12012/26/2012-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPURNO. CGIT/LC/RC/7/2012**Present:** P. K. Srivastava H.J.S..(Retd)

Shri Vinod Kumar Dwivedi
 Peon/Hamal (Dismissed)
 Union Bank of India
 Sidhi Main Branch,
 Sidhi (M.P.)

... Workman

Versus

The General Manager(HR) &
 Disciplinary Authority
 Nodal Regional Office, HRMD
 Bhopal (M.P.)

The General Manager(P&HR)
 & Appellate Authority
 8th Floor, Union Bank of India
 Union Bank Bhavan, Central Office
 Mumbai

... Management

AndNO. CGIT/LC/R-138-2012

Shri Vinod Kumar Dwivedi,
 LIG-314, New MPHB Colony,
 Priyadarshni Nagar, Sidhi,
 Madhya Pradesh

... Workman

Versus

The Dy. General Manager,
 Union Bank of India, Regional Office
 Sirmour Chowraha,
 District Rewa (MP)

The Branch Manager
 Union
 Bank of India D.P.complex
 Sidhi, District Sidhi
 Madhya Pradesh.

... Management

AWARD**(Passed on this 7th day of January-2020)**

1. The case No.RC-7-2012 has come out on the basis of an application filed by workman under Section 2A(2&3) of Industrial Disputes Amendment Act-2010 with the allegations that the workman was working as a personal driver to Lead District Manager, Union Bank of India, Sidhi for about 16 years from 1993 to 2009. He was first appointed in Sidhi branch of the Bank on permanent post of peon on February-7-2009 and had been discharging his duties as a peon to the satisfaction of his superiors and public. A written complaint dated November-25-2009 addressed to District Sainik Welfare Officer sent by bank account holder Smt. Urmilla Devi wife of late Shri Jagdish Prasad, a Pensioner, wherein it was stated that she did not withdraw her pension from her pension account since last two years. She came to know on November-24-2009 on her visit to the Branch that about Rs.2,00,000/- (Rupees Two lac only) have been withdrawn by the workman in connivance of the son of the account holder Pramod Tiwari. The workman was served with a charge sheet for the charges:-

1. **Doing act prejudicial to the interest of Bank and gross negligence involving the bank in serious loss.**
2. **Wilful damage to property of the customer of the bank.**

3. Breach of rule of business of bank and instructions for running of any Department.

2. It is the case of the workman that he was punished with dismissal without notice for charges of misconduct and punishment for the third charge which was minor misconduct. He did file an appeal with the department which was also dismissed. According to the workman, the departmental inquiry was conducted by Shri H.V. Choudhary, Senior Manager. A supplementary charge of obtaining loan of Rs.25,000/- for purchasing computer at the time while the workman was working as a personal driver to the Lead District Manager by suppressing facts of employment and technical qualification was also levelled against him. The Inquiry Officer held the charges proved. The inquiry was defective on following grounds:-

- (i) List of witnesses and documents were not given to CSE in advance before start of enquiry proceedings. Documents are produced by management witness at the time of his examination in chief in Departmental Proceedings.
- (ii) List of witnesses & documents were not given to CSE.
- (iii) During enquiry proceedings CSE requested E.O. producing two important papers/documents which were in possession of Bank but E.O. denied to give it without stating any reason.
- (iv) Before completion of Management witnesses single and only one Defence witness was examined.
- (v) Head Cashier who has made cash payments of alleged forged withdrawal forms was not examined by E.O. other clerical staff involved in posting of disputed withdrawal forms were not examined in the enquiry.

3. According to the workman the punishment was excessive, the inquiry was defective and charges were wrongly held proved. Accordingly the workman has prayed to set aside his dismissal directing the management of bank to reinstate him from the date of his dismissal with all service benefits and back wages.

4. The case of the Management, as put up in their written statement of defence is that the workman was initially employed by Lead District Manager as his personal driver in his personal capacity. He was initially recruited by the bank on the post of peon vide order dated January-30-2009 and joined as a peon in regular strength of the bank on February-7-2009 in Collectorate campus Branch at Sidhi District. A complaint dated 26-11-2009 of one pension account holder Smt. Urmilla Devi was received by the bank through District Sainik Welfare Office wherein she alleged fraudulent withdrawals from her pension account. The complaint was inquired into. It was found that these fraudulent withdrawals were the hand work of applicant workman, hence placing the workman under suspension, a show cause notice dated February-3-2010 showing the details of amount withdrawn from the period of July-1-2007 to December-8-2009 and the workman was asked to explain his stand. The workman did submit his reply vide letter dated February-26-2010 which was not satisfactory and a departmental inquiry was ordered against the workman. A charge sheet dated March-18-2010 was served on him by the Inquiry Officer who was appointed by Disciplinary Authority with the major charge of committing misconduct as stated above a supplementary charge sheet was also issued regarding obtaining loan by concealing facts as stated earlier vide letter dated April-26-2004. The Service of Defence Assistant was provided by the Inquiry Officer. As much as 79 documents were filed during the Inquiry and statement of inquiry witnesses were recorded. The workman was given full opportunity to cross-examine the witnesses and opportunity to produce evidence in defence was also given by Inquiry Officer during the inquiry. After hearing both the parties the Inquiry Officer submitted his inquiry report holding charges against the workman proved. After hearing the stand of the workman on proposed punishment the Disciplinary Authority passed the impugned punishment of dismissal without notice which is proportionate to the charges which attracted maximum punishment. The workman did file an appeal before the Controlling Authority which was rightfully dismissed. Accordingly, the management has rightfully requested that the petition be dismissed.

5. During pendency of the petition a reference was made by the appropriate Government to this Tribunal as per letter dated 3-12-2012. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/26/2012-IR(B-II). The dispute under reference relates to:

“Whether the action of the management of the Union Bank of India in awarding the punishment of Dismissal without notice to Shri Vinod Kumar Dwivedi, Ex-Peon/Hammal vide order dated 30.11.2010, is legal and justified? What relief the concerned workman is entitled to .”

6. Since the claim of the reference and petition RC-7-2012 were one and the same, both the files were consolidated/merged and proceedings were recorded in case No.RC-7-2012.

7. On the basis of the pleadings, following issue was framed by my learned Predecessor vide his order dated July-14-2015.

- “1. Whether, enquiry conducted against workman is proper and legal?**
- 2. Whether, charges are proved from evidence adduced in enquiry proceedings?**
- 3. Whether, punishment of dismissal imposed against workman is just and proper?**
- 4. If so what relief, the workman is entitled ?**

8. **Issue No.1:-** It was taken as preliminary issue. Management filed inquiry documents, admitted by workman and marked as Exhibit M-1 to M-17. The Management also examined its witness which was cross-examined by the workman.

9. The Workman did not adduce any oral evidence on preliminary Issue No.1.

10. On the basis of evidence recorded in Issue No.1 my learned Predecessor held the departmental inquiry proper and legal vide order dated October-12-2015. This order is part of the Award. Parties were again given opportunity to lead evidence on remaining issues,. The workman examined himself and was cross-examined. The management filed documents Exhibit M-18 and M-19. The workman further filed the papers of inquiry which were taken on record. After hearing the arguments the case was reserved for award. Keeping in view the case of the workman that other staff which were the Manager, Clerk, Cashier as well as Accountant whose role was also inquired in this incident. They also faced a departmental trial but were awarded lesser punishment of withholding of one increment hence the attitude of Management is discriminatory with regard to punishment. While passing the award management was directed to file details of charges of punishment awarded to other employees vide order dated April-13-2019.

11. The Management did file details of punishment awarded to Jagmohan-Accountant, R.S. Chawda-Manager, Vishwajeet Kumar and Sanjeev Ranjan-Clerks who were found guilty for the same charges of passing the alleged fraudulent withdrawal and payments. **Issue No.1 is answered accordingly.**

12. I Have heard argument of Mr. Pranay Choubey, learned Counsel for workman and Shri Shailendra Pandey, learned Counsel for Management on remaining issues and have gone through the record.

13. **Issue No.2:-** The charges against the workman are that he first got the account holder Smt. Urmila Devi, who happened to be his Mother-in-Law introduced by one bank staff Santosh KunmarYadav, Sweeper and fgot her account opened with the bank. Second charge is that on various dates the workman came with withdrawal form and loose cheque with forged signature of account holder and withdrew money from her account in absence of the account holder. The details of withdrawal filed as annexures show that it started from July-21-2007 to November-25-2009. This document is Exhibit M-21 and M-22. A supplementary charge was that while the workman was working as a personal driver to the Lead District Manager(not as a bank employee) he took loan of Rs.25,000/- concealing his employment and qualification though it was paid by the workman in time.

14. Exhibit M-22 goes to show that 38 out of 73 wrong withdrawals are of the period when the workman was not a regular employee of bank rather he was working as a personal servant(driver) to the Lead District Manager. The documents regarding inquiry revealed that though the workman was not instrumental in accepting the withdrawal or approving the withdrawal for payment of the amount withdrawn he used his position as a personal servant of Lead District Manager and as a peon of the bank after his regular employment in getting the withdrawal passed. It also comes out that all the wrong and fraudulent withdrawal were passed by the then clerk, cashier, accountant and manager and they were also charged and a departmental enquiry was conducted against them. The details have already been mentioned earlier in this judgment. The learned counsel for workman has stated that none of the withdrawal forms were ever produced during the inquiry to show that the workman had forged signatures of the account holder. All the witnesses stated only the fact that he used his position as a personal driver of the boss and peon of the bank . The fact of getting loan concealing some information by the workman in using his influence in getting alleged fraudulent withdrawals passed when he was personally servant of Lead District Manager are certainly not the acts done by the workman as a servant of the bank. It is surprising as to how the bank staff was so vulnerable to be pressurised by the personal driver of the Lead District Manager. As regards the alleged fraudulent withdrawals during the tenure of his regular appointment as peon, evidence and record of inquiry in form of statement of witnesses and documents produced

before this Court the fact that the workman did persuade the bank staff in getting the withdrawals passed is established though more liable are the officers and clerks/cashier/accountant who buckled to this pressure and failed to discharge their duty for which they were deputed. From the inquiry papers it cannot be said that none of the charges are proved against the workman during the inquiry. Accordingly it is held that charges of using his position in getting the fraudulent withdrawal passed is held proved though it is surprising as to how such a peon of the bank can be so influential to impress every staff of the bank to act according to his wishes. Certainly the whole episode smacks of conspiracy. **Issue No.2 is decided accordingly.**

15. **Issue No.3 & 4:**- This issue is regarding the proportionality of punishment for the charges of misconduct committed by the workman when he was not in the service of Bank, he cannot be punished in Bi-Partite Agreement. The punishment order does not distinguish between the act of omission and commission which were done by the workman when he was not in employment of the bank and when he was in employment of the bank. Secondly the workman was not an approving authority. He was not the person to deliver the cash to the holder hence the other staff as mentioned above is equally or more guilty than the present workman in the whole episode. The details of punishments given to other staff show that minor penalty of reduction by one stage in scale of pay without cumulative effect was awarded to the other five officials who were mainly obligated and connected with the job whereas the workman has been awarded with the punishment of dismissal without notice which certainly smacks of discrimination by the Authority who has passed punishment and approved it. In case of **Rajendra Yadav Vs. State of M.P. & Ors {arising out of SLP(Civil) 2070 of 2012}** decided by Hon. Apex Court on 13-2-2013, it has been observed by Hon. Apex Court that doctrine of equality applies to all who are equally placed even among persons who are found guilty. Para-12 of this judgment is being reproduced as follows:-

“12. The Doctrine of Equality applied to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e. lesser punishment for serious offences and stringent punishment for lesser offences.”

16. Hence in the light of above discussion I hold the punishment of dismissal of workman in the case in hand shockingly dis-appropriate and discriminatory. In my considered view the stoppage of one increment without cumulative effect as it was awarded to co-delinquents will meet the ends of justice with respect to the workman also. **Accordingly Issue No.3 & 4 is answered.**

17. On the basis of the above discussion, following award is passed:-

- A. The action of the management of the Union Bank of India in awarding punishment of Dismissal without notice to Shri Vinod Kumar Dwivedi, Ex-Peon/Hammal vide order dated 30.11.2010 is not justified in law and fact.**
- B. The workman is entitled to be reinstated with 30% of back wages and all other service benefits with punishment of stoppage of one increment without cumulative effect.**

P. K. SRIVASTAVA, Presiding Officer

DATE: 7.1.2020

नई दिल्ली, 6 फरवरी, 2020

का.आ. 180.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 88/2014)को प्रकाशित करती है जो केन्द्रीय सरकार को 06.02.2020 को प्राप्त हुआ था।

[सं. एल-12011/86/2014-आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 6th February, 2020

S.O. 180.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 88/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Union Bank of India, and their workmen, received by the Central Government on 06.02.2020.

[No. L-12011/86/2014-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/88/2014

Present: P.K.Srivastava, H.J.S..(Retd)

The General Secretary
Rashtriyakruth Bank Karmachari Sangathan
F-1 Tripti Vihar, Opp. Engineering College
Ujjain (M.P.) ...Appellant

Assistant General Manager
Union Bank of India, Nodal Regional Office
1513/1/1, Arera Hills.
Bhopal (M.P.) ...Respondent

AWARD

(Passed on this 31st day of December, 2019)

1. As per letter dated 25-11-2014 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No.L12011/86/2014-IR(B-II). The dispute under reference relates to:

“Whether the demand of Union claiming payment of to the dependent wife Smt.KrishnaMalviya W/o late MohanlalMalviya is justified or not? what relief she is entitled for ?.”

2. After registering the case on the basis of reference, notices were sent to the parties.
3. The case of the workman as stated in his statement of claim is that he was terminated by the Management for a charge vide order dated 14-11-2011. He raised dispute before the Regional Labour Commissioner but during the pendency of dispute he died. The applicant who happens to be the widow of the deceased workman raised the dispute again for payment of family pension to her after death of her husband. After failure of conciliation the dispute was referred to this Court for adjudication by appropriate authority.
4. The case of Management is that her husband was in employment of Management/Bank. He committed the misconduct of theft of 400 Dollars currency on 6-6-1995 which were to be sent to the overseas Delhi branch. In Delhi an FIR was registered in this respect on 18-6-1995 and he was arrested by police. He was suspended for this misconduct vide order dated 4-11-1996 and charge sheet dated 6-1-1997 was issued to him. He did submit his reply dated 28-1-1997 denying the charges. The Disciplinary Authority instituted a departmental inquiry vide order dated 7-11-2000. He did approach before Hon'ble High Court by way of writ against the departmental inquiry but it was dismissed and appeal against this was also dismissed by Hon.Division Bench of Hon. High Court. Details mentioned in Paragraph-7 of the written statement of the defense. Further it was pleaded that the workman did participate in the Inquiry. The inquiry Officer found the charges proved and submitted his inquiry report. The workman was dismissed vide order dated 14-11-2011 passed by the Disciplinary Authority after giving him an opportunity of hearing on the inquiry report. It was also ordered that except subsistence allowance the workman will not be entitled to any benefit. According to the Management, since the deceased workman was terminated from service, he was not entitled to any pension, hence his widow is also not entitled to any pension. Accordingly the Management has prayed that the reference be answered against the workman.

5. At the stage of evidence the workman has filed photocopy documents when the matter was pending before the Regional Labour Commissioner which have been admitted by Management and they have been marked as W-1 to W-12 respectively. Rest of the photocopy documents have been denied by the Management. They are required to be proved but have not been proved by appellant/workman. No oral evidence has been adduced from the side of the appellant. The Management has examined the Chief Manager Shri Ramesh Kolekar who has proved the inquiry papers which are Exhibit M-1 to M-7. He has been cross-examined by appellant's representative. At the stage of arguments, parties have preferred to file written arguments. I have perused the written arguments submitted by both the sides and also the record.

6. The reference is the issue which arises for determination in the present case.

7. As the reference itself states, the point of determination is whether the dependent of widow of the deceased employee who was terminated from service for the charge of misconduct is justifiable in law or not?.

8. The Management has referred to Union Bank of India Employees (Pension) Regulations 1993 Chapter-II Clause 10, Clause 19(1) and Chapter 8 which reads as follows:-

1. **Chapter-3(Clause-10):-** "Forfeiture of Service- Resignation or Dismissal or Termination of an employee from the services shall entail forfeiture of his entire service and consequently shall not qualify for pension."
2. **Clause 19(1):-** "An employee of the bank who is dismissed or retrenched from the services shall forfeit his pension"
3. **Chapter-8:-** "The competent authority may by order in writing withhold or withdraw the pension or a part thereof whether permanently or for specific period if the employee is convicted of a serious crime or is found guilty of the grave misconduct."

9. According to the Management the husband of the appellant was terminated from services after departmental inquiry for the charge of misconduct which invited major punishment. These facts and inquiry papers have been proved by the Management Witness. The legality of departmental inquiry is not an issue in the present case. The main argument of the workman is firstly that pension scheme is in force in the Bank in 1993 whereas the deceased employee was employed in 1976 and was terminated in 2011. He was not informed about his non-eligibility for pension on the ground of dismissal from service and secondly it is admitted that the deceased employee had given option for pension. There is no specific order by Disciplinary/Controlling Authority for forfeiture of his pension. Now the point arises if the Management was obligated in law to inform the employee that he was ineligible for pension on the ground of his dismissal and whether the Controlling /Disciplinary Authority was obligated in law to specifically mention that the employee was not eligible for pension due to his dismissal from service for the charge of misconduct.

10. I am of the considered view that Management is not obligated under law to do these two acts for the reasons that it is so provided in the service rules governing pension services which have been reproduced as above. All the persons are expected in law to know about the Rules/Regulations in force. Hence the arguments of the workman side is not tenable in law on this point. Accordingly, holding that the demand of union claiming pension to dependent Smt. Krishna Malviya wife of deceased workman Mohanlal Malviya in the case in hand is justified in law and she is held entitled to no benefit.

11. In the result, award is passed as under:-

- A. **The action of the management in holding that the demand of union claiming pension to dependent Smt. Krishna Malviya wife of deceased workman Mohanlal Malviya in the case in hand is justified in law.**
- B. **Smt. Krishna Malviya wife of deceased workman Mohanlal Malviya is held entitled to no benefit/relief.**

P. K. SRIVASTAVA, Presiding Officer

DATE: 31.12.2019

नई दिल्ली, 10 फरवरी, 2020

का.आ. 181.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऐक्सेस बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2 नई दिल्ली के पंचाट (संदर्भ संख्या 109/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.02.2020 प्राप्त हुआ था।

[सं. एल-12012/72/2011-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 10th February, 2020

S.O. 181.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 109/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, New Delhi as shown in the Annexure, in the industrial dispute between the management of Axis Bank and their workmen, received by the Central Government on 10.02.2020.

[No. L-12012/72/2011-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 109/2011

Date of Passing Award- 18th November, 2019

Between:

Shri Narendra Kumar,
S/o Shri Bhanwar Singh,
R/o 498, Sainik Colony, Roorkee Hall,
553, Gandhi Colony,
Roorkee.

...Workman

Versus

1. Managing Director,
Axis Bank, Corporate Office,
Bombay Dying Mills Compound, Pandurang,
Budhkar Marg, Worli,
Mumbai.

2. Circle Head,
Axis Bank,
IIPM Tower, 74, Rajpur Road,
Dehradun.

3. Branch Manager,
Axis Bank,
343/29, Civil Lines, Roorkee

...Managements

Appearances:-

Shri Saurabh Rastogi (A/R) For the Workman.

Shri Gautam Dutta (A/R) For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Axis Bank, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-12012/72/2011 (IR(B-1) dated 24.11.2011 to this tribunal for adjudication to the following effect.

“Whether the action of the management of Axis Bank in imposing the penalty of “Dismissal from services of Bank” on Shri Narendra Kumar, Emp No. 11454, vide their order dated 31.03.2011 is legal and justified? To what relief the workman is entitled to?”

Being noticed both parties entered appearance.

As emerges from the claim statement filed by the claimant/workman he had joined the management Bank on 10.08.2006 as Sales Executive against a permanent and regular post and was posted in the Branch of the Bank at Haridwar. On completion of one year probation his service was confirmed by the management. Though he was appointed as a sales executive the nature of work discharged by him was purely of clerical nature. Neither he was discharging managerial job nor any subordinate staff was reporting to him. On 01.01.2009 he was transferred to Roorkee branch and again on 03.02.2011 transferred to Dehradun Branch. His salary at that time was Rs. 11,070/- per month. On some false and frivolous allegation and without verifying the correctness of the same the bank management on 23.02.2011 suspended him and while doing so no showcause notice or preliminary inquiry was conducted. During the period of suspension no subsistence allowance was even paid to him. On 03.03.2011 the management served a notice containing allegation that he had taken money from the customers for deposit of the same but never deposited. The claimant submitted a reply to the notice to the Branch head, circle Head, and Managing Director of the bank. He was then asked to appear before the Bank Disciplinary Committee at Mumbai on 30.03.2011 where no formal inquiry was conducted. He was not even given opportunity to setup a proper defence to prove his innocence. To his utter surprise on the next day i.e. on 31.03.2011 order was passed dismissing him from service which was received by him on 13.04.2011. In the order he was asked to file appeal to the management’s concerned authorities. The appeal filed by him was also dismissed.

Being aggrieved by the illegal act of the management in terminating his service without conducting a domestic inquiry, he raised a Labour Dispute before the Deputy Labour Commissioner Dehradun. In the conciliation proceeding the management participated but no conciliation could be arrived. Thus, the Appropriate Government referred the matter to the tribunal to adjudicate upon the correctness of the action taken by the management.

The management Bank filled Ws challenging the maintainability of the proceeding on the ground that the claimant is not a workman as defined u/s 2(s) of the ID Act since, he was appointed as a Business Development Executive which was a managerial Post. It has also been stated that the claimant though appointed against a permanent post, was an indisciplined person from the beginning. The Bank had received several complaints from the customers about the dishonest activity of the claimant who was in the habit of receiving money from the customers but not depositing the same unless complaints made by the customer and detected by the Bank Authorities. On several occasions he was also found tampering with customers documents for which warnings were given to him. On some occasion the claimant workman had also confessed this guilt, submitted written apology and assurance not to repeat the things in future. Despite that he could not rectify himself and the Bank on the basis of the feedback or other staff of the Bank and customers, decided to take action against him. The AVP and Branch Head of the Bank recommended to the Head Office vide letter dated 10.01.2007 for action against the claimant for his doubtful integrity and character. As a temporary measure he was also transferred to Dehradun Circle in the year 2011 on administrative ground. On receipt of serious complaints from the customers the Bank took a decision for initiating a disciplinary proceeding against him and pending contemplation of the disciplinary proceeding he was placed under suspension on 23.02.2011. A Preliminary inquiry was conducted by a committee at Roorkee Branch and a showcause notice was served on him. He was also given the option of personal hearing and accordingly opportunity of personal hearing was given to him on 30.03.2011 at Banks Corporate Office Mumbai. Considering the gravity of the allegation and charge leveled against him the Bank management took a decision for dismissing him from service on 31.03.2011. The appeal filed by the claimant against the order of dismissal was also rejected. Not only that one criminal complaint was also made by the Bank against the workman for alleged Cheating and tampering of document etc on basis of which FIR No. 259/2011 was registered at the Police Station Roorkee. The management has also alleged that the claimant has deliberately suppressed about the FIR and criminal case pending against him in his claim statement. With such assertion the management has stated that the Bank management, following all the Rules and Regulations governing the business of the Bank and also by following the Principles of Natural Justice passed the order of

dismissal which is under challenge. The said order doesn't suffer from any infirmity inviting interference and adjudication by the tribunal.

The claimant filed rejoinder to the WS denying the stand taken by the management. It is the specific stand taken by the claimant that the work basically done by him was of clerical nature though in his appointment letter it was mentioned as Business Development Executive. There were no staff reporting under him nor he was having administrative or supervisory control over other employees.

On these rival pleadings following issues were framed for consideration.

ISSUES

1. Whether enquiry conducted by the management was just, fair and proper ?
2. Whether claimant is a workman within meaning of section 2(s) of the Industrial Dispute Act 1947 ?
3. Whether Punishment of dismissal from service commensurate to the misconduct of the claimant ?
4. As in terms of reference.

The workman examined himself as WW1 and produced the documents marked in the series of WW1/1 to WW1/12. These documents include the showcause notice served on him, the reply given by the workman, the representation sent by the workman to the Senior Vice President of the Bank the Circle Head and the postal receipt thereof. The witness was cross examined at length by the A/R for the management. On behalf of the management Bank one of its witnesses Shri Navneet Joshi tendered his evidence on 02.02.2017 and was partly cross examined on that day. On subsequent dates the witness did not appear to face the cross examination any further and the cross examination was closed. The said management witness had filed photocopies of certain documents which were placed on record being marked as A to E without being exhibited. Those documents include appointment letter of the workman, the FIR lodged against him, the report regarding a criminal offence committed by the claimant to the Senior Superintendent of Police Haridwar, the order of suspension, the disciplinary action of dismissal passed against the workman claimant.

At the outset of the argument the Ld. Counsel for the management pointed out that this tribunal by order dated 16.05.2013 had framed 4 issues and the issue no.1 was with regard to the fairness of the inquiry conducted by the management. He thereby submitted that the said issue should have been considered as preliminary issue. In reply the Ld. A/R for the management submitted that there was no enquiry at all conducted against the workman and thus, there is no scope for the tribunal to here issue no.1 as preliminary issue to judge the fairness of the inquiry.

It is true that no step was taken for hearing of issue No.1 as preliminary issue. Hence, this tribunal is of the view that all these issues shall be taken up for consideration together for answering the reference received from the Appropriate Government.

FINDING

ISSUE No. 1

The claimant has challenged in the claim petition about the unfairness of the order of termination on the ground that no inquiry was conducted nor any inquiry officer was appointed. It is admitted by the management by the witness examined on its behalf that no formal inquiry was conducted on the allegations received against the claimant. The witness examined on behalf of the management Navneet Joshi has stated that the claimant/workman was creating indiscipline in the Branch and was in the habit of retaining the initial deposit money of the customers while opening new accounts. On many occasions the Bank was put to an embarrassed situation when the customers approached and alleged about the said non deposit. On other occasions the claimant was found guilty of tampering with the customer's documents and submitted written apology assuring not to repeat the same. On the feedback received from the customers the Bank management transferred him to Roorkee and from there to Dehradun. For his doubtful integrity the Branch Head recommended to the Head office for his removal and a decision was taken by the management for initiating disciplinary proceeding against him. Pending initiation of the disciplinary proceeding he was placed under suspension on 23.02.2011. On 11.03.2011 a showcause notice was issued to him under the Banks staff rules. The written statement of defence submitted by the claimant was considered but found not satisfactory. The management then called the workman for personal hearing at its corporate office at Mumbai on 31.03.2011. On the next day i.e. on 30.03.2011 considering the gravity of the allegation order was passed dismissing him from service. The witness has also stated that for the allegations received against the claimant FIR was lodged against him at the Police Station

Roorkee which is under trial before a criminal court. The documents like showcause notice order of suspension, order of dismissal and the copy of the FIR have been placed on record.

The claimant has admitted the facts as per the oral statement of the witness examined by the management and the related documents placed on record. The only objection raised by the claimant is that the procedure followed before passing the order of termination is not in accordance to the procedure to be adopted in a domestic inquiry against the employee of the Bank. The Ld. A/R for the claimant forcefully argued that the management though time and again pleaded that the inquiry was conducted following the Axis Bank Staff Rules, at no point of time the said rule was placed on record by the management. He also argued that the law is well settled on the point that the domestic inquiry conducted against an employee of an establishment particularly of a Bank being a quasi judicial procedure and the inquiry officer since discharges a quasi judicial function, all steps are required to be taken following the Principles of Natural Justice. But in the case of the claimant the Bank authority took a conspicuous departure from the said established principal making the inquiry and the order of dismissal illegal.

The law of the land is well settled that when the disciplinary authority decides to conduct a domestic inquiry for any act of misconduct against its employee, a detail charge containing the allegation is required to be served on the said employee giving him an opportunity to showcause. If the cause shown is found not satisfactory inquiry is to be initiated for which an inquiry officer is required to be appointed. During the inquiry the charge sheeted employee should be provided with all the documents proposed to be relied upon by the department and need to be apprised of the procedure to be adopted during the inquiry. Not only that he should be apprised of his right to engage a defence representative to defend the allegation. But in the instant case as seen from the documents and from oral evidence adduced by management no charge head was supplied to the claimant. He was not even informed about the specific complaints received against him. Only a showcause notice was served on him and after the showcause received from the claimant he was directed to appear before the disciplinary authority in the corporate office. What was the finding on the showcause notice and what was the observation of the disciplinary authority after his personal hearing was never communicated to him. Without assigning any reason and by a non speaking order he was dismissed from service and the departmental appeal filed by him was also mechanically dismissed. Though the management had filed a copy of the FIR lodged in a police station at Roorkee, no evidence has been adduced to show if on that FIR investigation ended in a charge sheet or final report. There is also no evidence either oral or documentary to believe that pursuant to the FIR a criminal trial is pending against the claimant. All these circumstances taken together lead to a conclusion that the inquiry conducted by the management was not done in a fair manner following the Principles of Natural Justice. This issue is answered in favour of the workman.

ISSUE No. 3

In view of the finding arrived while deciding the issue no.2 it is held that the inquiry having not been done properly, the punishment inflicted on the claimant is not proportionate to any misconduct committed by him since in the inquiry has not alleged misconduct has not been proved. This issue is accordingly answered in favour of the workman and against the management.

ISSUE No. 2

The management while filing the WS took a specific stand that the claimant was appointed as a Business Development Executive and the nature of work discharged by him was supervisory in nature and thus he doesn't fall under the definition of workman as provided u/s 2(s) of the ID Act. A Plane reading of section 2(S) reveals that the workman is a person employed in a industry to do manual and unskilled work and not a person employed in a supervisory capacity drawing salary exceeding Rs. 10,000/- per mensem or exercises either by the nature of the duties mainly of a managerial nature. On behalf of the management appointment letter of the claimant has been placed on record which shows that he was appointed as a Business Development Executive and his monthly salary was Rs. 11,070/-. But in the oral statement the claimant has disputed the same on the ground that he was never discharging any managerial or supervisory nature of work and no other staff was reporting to him as subordinate. His job being clerical in nature the amount of monthly salary matters little and for all practical purposes he was a workman falling within the definition given u/s 2(S) of the ID Act. No other better evidence has been placed on record to believe that the claimant was discharging managerial nature of work and thus, cannot be treated as not a workman to make the proceeding not maintainable. In the case of **Divisional Controller Raichur vs. B.S.S Kumar Son of Babu Ram reported in 2019LLR1102** the Hon'ble High Court of Karnatak have held that it is not the designation of the post held by the employee which is relevant, but what is relevant is the nature of the duties performed by the employees. The Court has to find out what is the nature of the supervisory duty performed by the employee, do they include directing the subordinates to do their work and to oversee their performance, does the employee have power either to recommend or

sanctioned leave of other workman working under him etc. In this case there is absolutely no evidence placed on record to presume that the workman of this proceeding was discharging any duty supervisory in nature. In that view of the matter it is held that the claimant is a workman and the proceeding is maintainable. This issue is accordingly answered in favour of the claimant.

ISSUE No. 4

This reference has been received to decide whether the dismissal of the workman is legal and justified and to what relief he is entitled to. While answering the other issue it has already been held that the inquiry was never conducted to prove the alleged charge and an arbitrary order was passed terminating him from service. The Ld. A/R for the workman submitted that merely because a criminal case was initiated against him the same can't be taken as a ground for his termination.

In the case of **Raj Narayan vs. Union of India and others reported in 2019LLR 473** the Hon'ble Supreme Court while distinguishing the earlier judgment rendered in the case of Union of India vs. Jaypal Singh came to hold that if a prosecution is launched at the behest of the department and the employee is acquitted, different consideration may arise. The observation made in the judgment of Jaypal Singh (Supra) has to be understood in a manner in which the department would become liable for back wages. In all other cases there is no difference between initiation of criminal proceeding by the department visa-viz a criminal case lodged by the police.

In the said judgment the Hon'ble Supreme Court have further held that when the departmental proceeding failed the employee becomes entitled to reinstatement and full back wages.

In this case as observed earlier there was no enquiry at all by the management and the order of dismissal was passed on the basis of preliminary inquiry. The Hon'ble High Court of Madhya Pradesh in the case of **Virender Kumar vs. State of MP reported in 2018 Lab I.C. 3071** have clearly held that when the disciplinary authority imposes the punishment basing upon the evidence collected during preliminary inquiry the same is not sustainable. The natural Corollary would be that there being no evidence against the employee the punishment imposed on him is without basis. The Hon'ble High Court of Delhi in the case of **Vavasi Telegence Pvt. Ltd. vs. Shri Sehdev Yadav reported in 2019LLR11** have held that when termination of an employee is for habitual absence without inquiry the same is illegal. In this case there is absolutely no evidence on record to believe that inquiry was conducted as per Rules and having found sufficient evidence to prove the charge, punishment was imposed. That being the position the order of dismissal passed against the workman is liable to be set aside and he is held entitled to reinstatement to service with all back wages, continuity of service and other service benefit including seniority. This issue is accordingly answered. Hence, ordered.

ORDER

The reference be and the same is answered in favour of the workman the order of dismissal passed by the management is held to be illegal. It is directed that the workman shall be reinstated to service with immediate effect with full back wage and other service benefits like continuity of service, seniority etc. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 10 फरवरी, 2020

का.आ. 182.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलोर के पंचाट (संदर्भ संख्या 32/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.02.2020 को प्राप्त हुआ था।

[सं. एल-12012/16/2006-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 10th February, 2020

S.O. 182.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2006) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Bangalore as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 10.02.2020.

[No. L-12012/16/2006-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 17TH JANUARY 2020

PRESENT : JUSTICE SMT.RATNAKALA, Presiding Officer

CR 32/2006

I Party

Sh. Vijayabhaskar Shetty,
Suryalaya No. 156/A,
III STAGE, IV BLOCK,
I-'G' Cross, Sharada Colony,
Basaveshwaranagar,
Bangalore - 560 079.

II Party

The General Manager (P),
State Bank of India,
Zonal Office, Region-I,
No. 48, 5th Floor, Church Street,
P.B. No. 5014,
Bangalore - 560 001.

Appearance

Advocate for I Party : Mr. A J Srinivasan

Advocate for II Party : Mr. Ramesh Upadhyaya

AWARD

The Central Government vide Order No. L-12012/16/2006-IR(B-I) dated 02.08.2006 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

“Whether the action of the management of State Bank of India in imposing of punishment of discharge from the services of the Bank on Shri B. Vijayabhaskar Shetty, Ex-Assistant(Clerk), State Bank of India, Thambrahalli Branch w.e.f 29.03.2003 is justified? If not, what relief he is entitled and from which date?”

1. The case of the 1st Party workman is, that he joined the service of the 2nd Party as a Clerk on 11.04.1973; while working as an Assistant Manager he was issued charge sheet on false allegation and held a farcical enquiry in violation of the procedure and principles of natural justice. On the basis of the enquiry finding, he was imposed punishment by reducing his grade to that of an Assistant (Clerk); he challenged the said order before the Hon'ble High Court of Karnataka in W.P No. 2129/2003, the writ petition is still pending; the 2nd Party thereafter transferred him to a remote Branch as an Assistant (Clerk); due to his Medical problem he could not report to the transferred place immediately. Though he requested for a transfer to Bangalore same was not heeded, he reported for duty at Tambrahalli Branch on 19.08.2002, but his health deteriorated; on the advice of the Branch Manager he proceeded to avail medical facilities at Bangalore. He was issued charge sheet dated 27.06.2002 alleging that he has not reported to duty at Tambrahalli and unauthorisedly absented from work; Enquiry was ordered, Enquiry Officer conducted the Enquiry in collusion with the Presenting Officer; the request of the 1st Party to conduct the enquiry at Bangalore was not considered; he was placed ex parte and behind his back witness was examined and enquiry concluded hastily. The Enquiry Officer gave his finding on the basis of one-sided material; he submitted his reply to the Enquiry Report. The finding of the Enquiry Officer is perverse, the Disciplinary Authority proposed the punishment and gave him personal hearing; he attended the personal hearing before the Disciplinary Authority, without application of mind the punishment order is passed in mechanical way. The Appeal preferred before the Appellate Authority is still

pending, the punishment of discharge from service is disproportionate to the alleged charges; he is without employment.

2. The 2nd Party justified the punishment order imposed on the workman so also the validity of the Domestic Enquiry and the correctness of the enquiry finding in their counter statement.

3. On the rival pleading of the parties touching the validity of the Domestic Enquiry conducted against the 1st Party, a Preliminary Issue was raised, tried and adjudicated holding that the Domestic Enquiry conducted against the workman as not fair and proper vide order dated 13.12.2013.

4. From then onwards no effort is made by 2nd Party to prove their charges against the workman afresh. In fact, they have not produced the original charge sheet issued to the workman on basis of which the enquiry was conducted and enquiry report was submitted.

5. Sh. RU for the 2nd Party submits that the 1st Party workman was an Assistant Manager at Grade Scale-I and he was promoted to the said post in 1982 itself, and not a workman as contemplated by sec 2(s) of 'the Act', this Tribunal does not get jurisdiction to adjudicate this dispute and the present dispute is not an Industrial Dispute. Hence, the proceedings may be dropped.

6. I find no merit in the above submission, no such contention disputing the jurisdiction of this Tribunal to adjudicate the referred issue and non-applicability of the provisions of sec 11 of 'the Act' etc was taken earlier, in the statement filed by them while countering the claim allegations. They have not sought to raise a Preliminary Issue on the identity of the 1st Party as a workman under Sec 2(s) of 'the Act'. As per the claim statement he was issued charge sheet after his demotion from the post of Assistant Manager to the Post of Assistant/Clerk. While serving in the post of Assistant Manager he was issued charge sheet on some other allegation which he had challenged before the Hon'ble High Court in W.P No. 2129/2003 (S-DE) said order is produced by the 1st Party as Ex W-1. The Domestic Enquiry conducted against the workman prior to imposing the punishment of discharge from service since invalidated by this Tribunal and no effort being made by the 2nd Party to prove the charges afresh against him, the eventuality is the said punishment is illegal and not justified. The eventuality in such circumstances is, the workman will be entitled to seek reinstatement with back wages, but it appears from records that he has already attained superannuation. Hence, ends of justice requires that he be compensated by setting aside the punishment order and by treating him as on continuous duty from the date of punishment order till the date of his superannuation with 80% of the back wages.

AWARD

The reference is accepted.

The action of the 2nd Party / Management of State Bank of India in imposing the punishment of discharge from services of the Bank on 1st Party workman Sh. B Vijayabhaskar Shetty, Ex-Assistant(Clerk) from Thambrahalli Branch w.e.f 29.03.2003 is not justified.

2nd Party is directed to treat the workman as on continuous duty from the date of punishment order till the date of his superannuation and release 80% of the back wages and also terminal benefits.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 17th January, 2020)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 10 फरवरी, 2020

का.आ. 183.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण नं. 1 चण्डीगढ़ के पंचाट (संदर्भ संख्या 313/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.02.2020 को प्राप्त हुआ था।

[सं. एल-12012/98/2013-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 10th February, 2020

S.O. 183.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 313/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No.-II, Chandigarh as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 10.02.2020.

[No. L-12012/98/2013-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A. K. Singh, Presiding Officer

ID No. 313/2013

Registered on 29.01.2014

Ongchu Lepcha, S/o Nimatshring, Lepcha, R/o House No. 3299,
Sector 21-D, Chandigarh.

...Workman

Versus

The Branch Manager, State Bank of India, Industrial Area,
Phase-I Branch, Chandigarh.

...Management

AWARD
Passed on:-21.01.2020

Central Government vide Notification No. L-12012/98/2013-IR(B-I) Dated 01.01.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the action of termination of service of Sh. Ongchu Lepcha w.e.f. 8.12.1993 by the management of State Bank of India is legal, just and valid? If not to what relief the workman is entitled to and from which date?”

1. Brief facts, relating to the case are that, workman was working as Peon /Record Keeper in the State Bank of India, Industrial Area, Phase-1, Chandigarh and was placed under suspension vide letter dated 19.03.1991. As per claim petition, a false F.I.R. under Section 409 IPC and Section 13 of the Prevention of Corruption Act got registered by the Bank with the Police Station, East Chandigarh against the workman. Later on, the workman was dismissed from service arbitrary, illegally with mala fide intention without any justification by the management. The workman was convicted and sentenced by JMJC, Chandigarh vide judgment dated 14.01.2008 against which an appeal is preferred by the workman before the Sessions Judge, Chandigarh, and he was acquitted by Sh. Gian Chand Garg, Chandigarh, vide judgment dated 17.05.2011. In view of the acquittal and the facts alleged, workman is entitled to be reinstated in service with full back wages, continuity of service and consequential service benefits. The aforesaid dismissal from service is unconstitutional, contrary to the principles of natural justice. Hence, it is prayed that the workman be reinstated in service with full back wages and all consequential benefits.

2. Management has filed its written statement, alleging therein that the reference is not maintainable and deserves to be dismissed as the dispute being raised at a belated stage that too after a period of 20 years from the date of passing of order of dismissal dated 08.12.1993. During the enquiry proceedings, the workman was afforded full and proper opportunity to prove his innocence and to give his defense. The workman was rightly dismissed from the bank after following the proper procedure of issuing the charge-sheet on 21.02.1992 and the opportunity of personal hearing was afforded to the workman. Though not conceded if at all the enquiry proceedings are vitiated on any of the ground for violation of principle of natural justice, the management reserves its right to prove the charges of misconduct against the workman before this Hon'ble Court by leading evidence. It is further alleged that the workman while posted at Industrial Estate Chandigarh Branch and attending to dispatch seat during the period April 1988 to March 1991 took advances for meeting, postal expenses on various dates but did not enter these in postage books and had thus misappropriated a sum of Rs.36,000/- and misappropriated the total amount of Rs.1,10,910/-. It is therefore, respectfully prayed that the

reference may kindly be declined and decided against the workman and in favour of the respondent-management.

3. Tribunal afforded opportunity to the parties for leading evidence. Workman Ongchu Lepcha as well as his AR did not turn up for evidence regarding issue no.1 which relates to the fairness of enquiry and applicability of the principle of natural justice, resulting the opportunity of the workman to be closed. Management has filed affidavit of Manoj Kumar Gupta, Chief Manager(H.R.) as evidence, alleging therein that dismissal of the workman is result of fair and proper enquiry proceeding and he was given full opportunity to prove his innocence.

4. It is a matter of record that claimant/workman was dismissed from service on 08.12.1993 in pursuance of the enquiry conducted by the respondent-bank. Perusal of the file shows that this Tribunal vide its order dated 13.11.2019 has held that departmental enquiry was conducted in fair and proper manner after giving full opportunity to the workman to defend himself as such, enquiry was not conducted against the principle of natural justice. Perusal of the order dated 13.11.2019 it transpires that workman has not assailed the procedure of fairness of enquiry conducted by enquiry officer instead has alleged that opportunity was not provided to him during the course of enquiry. It is pertinent to mention that nothing is adduced in respect of the genuine absence of workman from running away with the enquiry. It is pertinent to mention that there is nothing on record to show that workman/claimant has challenged the order dated 13.11.2019 before the Hon'ble High Court as such, it has become final and workman/claimant is now stopped to say anything regarding the enquiry conducted by the enquiry officer.

5. I have heard Sh. Labh Singh, Ld. Counsel for the workman and Sh. S.K. Gupta, learned counsel for the management and perused the file.

6. Learned counsel of workman during the course of argument submitted that management has not been able to prove the charges leveled against the workman. It is submitted that even if it is presumed that the charges are proved even then they relates to such charges which does not require punishment of termination. The impugned order of termination is very harsh and disproportionate against the charges leveled. Learned counsel also submitted that workman had good service record throughout the carrier. It is further contended that the workman has been acquitted by the Appellate Court in criminal proceeding as such, the enquiry report and the action taken by the management has falsified. The workman-counsel has also submitted that the punishment of termination from service is discriminatory in nature and this Tribunal has got power under Section 11-A of the Industrial Disputes Act, 1947 to alter or modify the impugned order of termination by taking lenient view while exercising power under Section 11-A of the Act. Learned counsel has placed reliance to the case of M/s Firestone Tyre Vs. Management (1973) 1 SCC page 813 and Ramakant Mishra Vs. State of U.P. (1982) 3 SCC page 346, VIkram Aditya Pandey, 2013 page 423.

7. Learned counsel for the management argued that action of the disciplinary authority in passing the dismissal order is in commensurate to the gravity of misconduct proved against the workman. It is also submitted by the learned counsel for the management-bank that role of the Court in the matter of departmental proceedings is very limited and the Court cannot substitute its own views or finding arrived on the basis of the evidence available on record. In the matter of imposition of sentence, the scope for interference by the Court is very limited to exceptional cases. The punishment imposed by the disciplinary authority cannot be subjected to judicial review. In this connection, learned counsel of the bank has drawn my attention towards the judgment of the Hon'ble apex court in the case of S.R. Tiwari Versus Union of India (2013(7) Scale Page 417) and in the case of Depot Manager, APSRTC Vs. Raghudha Shiv Shankar Prasad 2007(1) RSJ Page 331 and in the case of M.L. Singla Vs. Punjab National Bank and submitted that the workman is not entitled to any leniency.

8. Perusal of the enquiry report, it is crystal clear that the claimant/workman was served with a charge-sheet regarding the misappropriation of Postal Amount to the tune of Rs.1,10,700/- in total with respect to the period from April 1988 to March 1991 while serving as Record Keeper by not entering the aforesaid amount in the Postage Books. The enquiry officer Sh. M.L. Dora has examined each and every aspect of charges leveled against the workman and the documents produced by the representing officer and came to the conclusion that charges with respect to misappropriation of the bank-amount to the tune of Rs.1,10,700/- has been proved.

9. In a departmental enquiry, the disciplinary authority is expected to prove the charges on preponderance of probability and not on proof beyond reasonable doubt. Reference may be made to the judgments of the Hon'ble High Court reported in Union of India Vs. Sardar Bahadur; (1972) 4 SCC 618 and R.S. Saini Vs. State of Punjab and Others; 1999(4) R.C.R (Civil) 253: (1999) 8 SCC 90. The documents produced by the bank, which were not controverted by the charged official supports all the allegations and charges leveled against the charged employee. In a case, where the charged employee had failed to inspect the

documents in respect of the allegations raised by the bank and not controverted it, is always open to the Inquiring Authority to accept the same.

10. There is no dispute that Section 11-A of the Act empowers this Tribunal to interfere with the quantum of punishment in appropriate cases (see decision of Hon'ble Apex Court in the case of Pepsu Road Transport Corporation Versus Rawel Singh, 2008 AIR (SCW) 2099; of Punjab & Haryana High Court in the case/s of Punjab National Bank Vs. The Presiding Officer, CGIT & another 2012(2) SLR 631; Harnek Singh Versus State of Haryana & others 2010(3) SLR 276 and Joginder Lal Versus The Presiding Officer, Labour Court, Ambala & another 1996 SCT 436). It is fairly settled that discretion is to be exercised judiciously in such cases where order of punishment is quite harsh & disproportionate to the gravity of misconduct of the official concerned on the basis of evidence on record.

11. So far as the arguments of the workman counsel with respect to acquittal of the accused in the criminal case is concerned, it is not disputed by the learned counsel of management. Learned counsel of the management argued that accused was given the benefit of doubt by the Appellate Tribunal after the conviction by the Trial Court but there is nothing on record with respect to the judgment of the Trial Court or Appellate Court. It is fairly settled that in any industrial dispute, the respondent-bank is required to prove the charges on preponderance of probability and not a proof beyond reasonable doubt. Reference can be made to the judgment of Hon'ble Supreme Court in Union of India Vs. Sardar Bahadur, R.S Singh Vs. State of Punjab and other(supra) and State Bank of India Vs. Narendra Kumar Pandey, Civil Appeal No.263/2013 dated 14.01.2013. It is settled position of law that workman is not going to get any benefit by virtue of the acquittal in criminal case and management has every right to prove the charges against the workman on preponderance of probability and not on proof beyond reasonable doubt. So far as the case in hand is concerned, workman has not submitted any evidence so far regarding his innocence because at the stage of evidence he remained absent and did not adduce any evidence. Contrary to this, Tribunal vide its order dated 13.11.2019 has held regarding preliminary issue no.1 that enquiry against the workman is conducted with all fairness after giving proper opportunity. The workman has not participated in the course of proceeding hence, he cannot claim that he was not given opportunity to defend himself and principle of natural justice is not followed as is held in so many cases by the Hon'ble Supreme Court.

12. It is settled law that punishment of the penalty to be imposed by the disciplinary authority against the charge-sheeted official is to be commensurate with the gravity of alleged misconduct. Undoubtedly, an Industrial Tribunal in terms of Section 11-A of the Act exercises discretionary jurisdiction. Indisputably, discretion must be exercised judiciously and it cannot be based on whims and caprices and should be based to all relevant factors in mind in exercising such jurisdiction. The nature of the misconduct alleged the conduct of the parties the manner in which the enquiry proceedings had been conducted may be held to be relevant factor. A misconduct committed with an intention deserves the maximum punishment. Each case must be decided on its own merits and in given case when the doctrine of proportionality may be invoked.

13. Question which arises for consideration before this Tribunal is whether punishment of termination is in proportionate to the charges proved against the charge-sheeted employee/workman. Considering the scope of judicial review on the quantum of punishment and referring to various cases in Jai Bhagwan Vs. Commissioner of Police & Ors., 2013(4) S.C.T. 607: (2013) 11 SCC 187, the Apex Court held as under:-

“What is the appropriate quantum of punishment to be awarded to a delinquent is a matter that primarily rests in the discretion of the disciplinary authority. An authority sitting in appeal over any such order on punishment is by all means entitled to examine the issue regarding the quantum of punishment as much as it is entitled to examine whether the charges have been satisfactorily proved. But when any such order is challenged before a Service Tribunal or the High Court the exercise of discretion by the competent authority in determining and awarding punishment is generally respected except where the same is found to be so outrageously disproportionate to the gravity of the misconduct that the Court considers it be arbitrary in that it is wholly unreasonable. The superior courts and the Tribunal invoke the doctrine of proportionality which has been gradually accepted as one of the facets of judicial review. A punishment that is so excessive or disproportionate to the offence as to shock the conscience of the Court is seen as unacceptable even when courts are slow and generally reluctant to interfere with the quantum of punishment. The law on the subject is well settled by a series of decisions rendered by this Court....”

14. Similarly, the Constitution Bench of the Supreme Court in State of Orissa and Oths. Vs. Vidyabhushan Mahapatra (1963) Supply 1 S.C.R. 648 opined that even if the charges which have been proved justified imposition of punishment of dismissal from service this Court may not exercised its power of judicial review. Thus, it is made clear by the Constitution Bench that power of judicial review is rare jurisdiction

confirmed to the Tribunal as well as High Court which could be exercised in rare manner going thorough the facts and the gravity of the charges proved during the course of enquiry by the management. Similarly, the Hon'ble Supreme Court in Usha Breco Mazdoor Sangh Vs. Management of Usha Breco and Oths., Civil Appeal No.3551/2008 decided on 29.04.2008, has held that:-

"It may not be a correct approach for a superior court to proceed on the premise that an Act is a beneficent legislation in favour of the management or the workmen. The provisions of the statute must be construed having regard to the tenor of the terms used by the Parliament. The court must construe that statutory provision with a view to uphold the object and purport of the Parliament. It is only in a case where there exists a grey area and the court feels difficulty in interpreting or in construing and applying the statute, the doctrine of beneficent construction can be taken recourse to. Even in cases where such a principle is resorted to, the same would not mean that the statute should be interpreted in a manner which would take it beyond the object and purport thereof."

15. There is no doubt that workman was employed as a Peon/Record Keeper at the relevant time and he had misappropriated total amount of Rs.1,10,910/- working as Peon/Record Keeper and was found guilty during the course of enquiry, resulting the termination by the competent authority of the management. The Hon'ble Supreme Court in the case of Regional Manager, U.P.SRTC vs. Hoti Lal, 2003(3) SCC, 605, has held in paragraph 10 as under:-

If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transaction or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding order of dismissal."

This view is further fortified by the Hon'ble Supreme Court in the case of Chairman and Managing Director, United Commercial Bank vs. P.C. Kakkar, 2003(4) SCC 364, has held in paragraph 14 as under:-

"A Bank officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager vs. Nikunja Bihari Patnaik, 1996(9) SCC 69. It is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court."

16. This Tribunal vide its order dated 27.03.2019 has framed second issue regarding maintainability of the reference by virtue of being delayed about 20 years. Burden to prove this issue is lying with the bank. learned counsel of the management argued that workman is terminated from service on 19.03.1991 and the reference is raised before this Tribunal vide Central Government notification No. L-12012/98/2013-IR(B-I) dated 01.01.2014, almost after 20 years hence, reference is not maintainable due to delay of almost 2 decades. Learned counsel of the management has drawn my attention towards the judgment of Hon'ble Supreme Court in the case of Personal Manager, SBI & Oths Vs. Krishna Grameena Bank Employees Union & Oths, Civil Appeal No.2790/2006 dated 28.11.2007 and Director, Food and Supplies, Punjab & Oths.Vs. Gurmit Singh, Civil Appeal No.6766/2004 dated 26.08.2004 and the Director Sheep Breeding Farm, Hisar Vs. The Presiding, District Agriculture Workers Union, Hisar and Oths., Civil Writ Petition No.917/2007 dated 28.04.2008. Contrary to this, learned counsel of workman contended that claimant was contesting the case in a criminal side because he was charge-sheeted under Section 409 of IPC from beginning till the acquittal of the workman by the Appellate Court. Learned counsel further argued that it is after the acquittal by the Appellate Court workman raised this industrial dispute as such, it cannot be side that the reference has become stale because he was pursuing his case in criminal court. Learned counsel further argued that there is no specific provision in the Industrial Disputes Act like as Limitation and Limitation Act is not applicable with respect to the ID Act as is held by the Hon'ble Supreme Court in the Case of Jaib Singh Vs. The Sirhind Co-op, Marketing-cum-Processing Service Society Ltd., Civil Appeal No.2157 of 1999 dated 08.04.1999, Haryana Land Reclamation and Development Corporation Ltd. Vs. Nirmal Kumar, Civil Appeal No.3961 of 2006,

Decided on 10.12.2007 and Raghbir Singh Vs. General Manager, Haryana Roadways, Hisar, Civil Appeal No.8434 of 2014, Devided on 03.09.2014. I have gone through the judgments of the Hon'ble Supreme Court cited by the learned counsel of management as well as learned counsel of workman. In a series of judgment, Hon'ble Supreme Court has observed that there is no universal formula on the basis of which it can be laid down that reference is within time or not. As per the Hon'ble Supreme Court, it depends on the facts of each case and there is no limitation prescribed for seeking demand under the Industrial Disputes Act, 1947, because provisions of Article 137 of the Limitation Act are not applicable to any application made under the ID Act, 1947. The Hon'ble Supreme Court in a few cases has held that reference may be deemed to be delayed if either of the party had not kept the dispute alive during the long interval or where reference has become stale by virtue of conduct of the claimant/workman or documents regarding the disputes has been weeded out or lost due to long gap when cause of action had arisen. So far as the case in hand is concerned, there is no dispute that reference is made after a long gap but it is equally proved that workman was contesting his case in criminal side by virtue of the F.I.R. lodged by the bank and has preferred application for reference after its acquittal by the Appellate Court. In this broader aspect, I am of the considered opinion that it cannot be said that reference is time barred and Central Government has no jurisdiction to refer this matter before the Tribunal for adjudication.

17. So far as issue no.3 is concerned, it has been framed with respect to the relief regarding reinstatement of workman with full back wages and continuity of service. On the basis of the above factual and legal position, this Tribunal is of the considered opinion that punishment of termination is in commensurate with the gravity of misconduct committed by the workman who misappropriated the amount paid to him for Postal purposes. Thus, his misconduct has damaged the trust of the bank. In such scenario, punishment of termination is in consonance with the misconduct committed by him as such, he is not entitled for reinstatement or back wages and continuity of service and petition is liable to be dismissed.

A. K. SINGH, Presiding Officer

नई दिल्ली, 10 फरवरी, 2020

का.आ. 184.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2 नई दिल्ली के पंचाट (संदर्भ संख्या 123/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.02.2020 प्राप्त हुआ था।

[सं. एल-12025/01/2020-आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 10th February, 2020

S.O. 184.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 123/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, New Delhi as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 10.02.2020.

[No. L-12025/01/2020-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT NO. 2: NEW DELHI

PRESENT : SMT. PRANITA MOHANTY, Presiding Officer, CGIT-cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE No. 123/2013

Date of Passing Award : 25th November, 2019

Between :-

- 1) Smt. Kamla – widow
- 2) Smt. Mamta – daughter
- 3) Shri Raman – son
- 4) Anuj – son
Legal heirs of late Shri Sarwan Kumar,
Ex Record Keeper cum Cashier,
r/o. H.No.870/7, Upper Ground,
Govindpuri, Kalkaji, New Delhi.

... Workman

Versus

1. State Bank of India, through
Assistant General Manager, SBI,
Super Circle of Excellence I/II,
Delhi Administrative Office -1,
11, Parliament Street,
New Delhi 110001.
2. Branch Manager,
State Bank of India,
Kalkaji,
New Delhi 110019

...Management

Appearances :-

Shri Shivam Garg, A/R : For the Workman
None : For the Management

AWARD

This award shall decide a claim petition which was directly filed by the workman/claimant Sarwan Kumar under Section 2-A of the Industrial Disputes Act, 1947(in short “the Act”), with the averments that on 3/3/1979 he was appointed as Messenger under the Management and since then he worked with integrity and great devotion to duty to the entire satisfaction of the Management. He was appointed/promoted as record keeper-cum-cashier in August, 1996 and was posted at Kalkaji Branch of Management Bank. All of a sudden, the workman was placed under suspension by the Management vide memorandum dated 28/8/2007 for alleged disclosure of a case of misappropriation of funds from account of the customers. Vide letter dated 29/1/2009 the Management required the workman to restore amount of Rs.2,42,100/- as provided under various complaints but copy of none of the complaints was given to him. Vide letter dated 29/1/2009 the Management also required the workman to explain financial irregularities in respect of certain transactions pointed out to him. The workman vide letter dated 16/2/2009 denied all the allegations and requested the Management to provide him connected documents, vouchers etc. The Management vide its letters dated 23/3/2009 and 9/5/2009 again directed the workman to give a detailed reply and he explained vide letter dated 6/7/2009 that all the transactions were made by him in good faith, without any negligence and that the signature of the drawer on the withdrawal slip appeared to be in order. A charge sheet dated 12/3/2010 was served upon the workman with the main allegation that the workman had permitted certain withdrawals without tallying the drawer’s signatures. The workman vide letter dated 20/3/2010 requested the Management to furnish receipts relating to charge No.5 of the charge sheet but the Management did not provide copy of the receipt, rather informed him vide letter dated 19/4/2010 that said charge related to the complaint made by Shri Nahar Singh and the workman to submit his reply. The workman vide his letter dated 26/3/2010 again requested the Management to furnish copies of the receipts but same was not supplied. It is pleaded that without providing the relevant documents, the Management vide letter dated 12/7/2010 proceeded with the disciplinary proceedings and appointed Shri S.K. Maheshwari as Inquiry Officer and Shri Ajeet Singh as Presenting Officer. The workman was required to give the name of his defence representative. The workman vide letter dated 2/8/2010 requested to release the subsistence allowance to enable him to defend the cases properly. According to him, the date of hearing was fixed on 3/8/2010 and the Presenting Officer submitted his written brief on 20/8/2010 after conclusion of enquiry on 17/8/2010. The workman vide letter dated 22/8/2010 & 23/8/2010 had requested the Inquiry Officer to permit him to be represented by Shri J.N. Kapur and denied the allegations. The enquiry report was prepared by the Enquiry Officer Shri S.K. Maheshwari, after conclusion of enquiry proceedings. However, copy of said report was not supplied to the workman. Rather, the workman was surprised and shocked to receive letter dated 22/11/2010, intimating about holding of afresh departmental enquiry against the workman, for which purpose Shri DD Sharma was appointed as Enquiry Officer and Shri Ajeet Singh as Presenting Officer. The workman was asked to give the name of defence assistant. The workman vide letter dated 6/12/2010 inquired about the reasons for holding fresh inquiry but the Management arbitrarily without assigning any reason advised the workman vide letter dated 5/1/2011 to appear for fresh inquiry on 8/1/2011. On 8/1/2011 the Inquiry Officer had declined the request of the workman to appoint Shri J.N. Kapur as defence assistant, without assigning any reason and thus, violated the principles of natural justice. Again vide letter dated 10/1/2011 the workman requested the Management about the reasons for holding fresh enquiry and he was directed to appear on 12/3/2011 for further proceedings. Vide letter dated 7/3/2011 the workman had sought adjournment and submitted reminder letter dated 4/4/2011, though he had submitted a defence written brief dated 4/1/2011.

Enquiry proceedings were held on 19/2/2011 and were concluded on 5/4/2011. The Management vide its letter dated 8/6/2011 intimated regarding conclusion of disciplinary proceedings. As per request of the workman vide letter dated 27/6/2011, copy of enquiry proceedings were provided to him by the Management vide letter dated 28/6/2011 and 1/7/2011. Vide letter dated 17/8/2011 the Management furnished the workman with Enquiry Report and communicated the workman about its tentative decision to dismiss him from service. Vide letter dated 29/8/2011 the workman sought extension of time to give reply and again vide letter dated 10/9/2011 requested the Management to supply him copy of enquiry held by Shri Maheshwari, since the proceedings dated 17/8/2010 were relied upon in the fresh enquiry also. **However, vide order dated 10/9/2011 the Management without affording an opportunity of hearing, imposed punishment of dismissal from service upon the workman.** The workman preferred appeal against the aforesaid order dated 10/9/2011, alleging that proper opportunity was not afforded to him but the Appellate Authority without application of mind and without considering his pleas, rejected the workman's appeal vide order dated 19/11/2011. The workman had thus, prayed for setting aside the order/s dated 10/9/2011 & 19/11/2011 and/or to change the punishment from dismissal to discharge/removal from service so as to enable the workman eligible for superannuation & pensionary benefits, as punishment of dismissal is too harsh and shocking as the workman had put 28 years of faithful & honest service and his family shall be at the verge of starvation.

2. Notice of claim petition was issued to the Management, who filed written statement, resisting the claim of the workman, submitting that the workman was found indulged in gross misconduct, having misappropriated funds from sundry accounts. When said misconduct was revealed, charge sheet was served upon the workman and thereafter departmental enquiry was conducted against the workman. He was given fair and proper opportunity. It is alleged that during the enquiry proceedings, the charges were accepted by the workman but after completion of enquiry he denied to accept the same, which consequently led to the holding second enquiry against him in order to give just and fair chance to the workman to defend himself. After conducting fair proceedings, staff award dated 10/9/2011 was passed wherein the workman was tentatively awarded penalty of dismissal from service in terms of para 6(a) of the memorandum of settlement dated 10/4/2002 entered into between the Management and workman Association. Due subsistence allowance was also given to the workman by the Management Bank. Denying the allegations of the workman, it is stated that all the required/relevant documents were duly provided to the workman by the Management on 17/8/2010 and he had admitted the genuineness and authenticity of the same. The workman despite receipt of charge sheet on 16/3/2010 had neglected to file reply thereto well past the stipulated time of 7 days provided in the chargesheet. It is alleged that the workman had also accepted the charges leveled against him, in his written reply/brief dated 20/8/2010. It is stated that the workman was not allowed to be defended by Shri J.N. Kapoor, as he was a retired employee of the Bank and could not be allowed to defend the workman, as a matter of bank's policy and it was so communicated to the workman on more than one occasion. In nut shell, stand of the Management is that enquiry proceedings were held in a fair and proper manner and the charges against the workman were found proved. Penalty of dismissal from service was imposed upon the workman after affording him proper opportunity through a personal hearing on 30/8/2011 but the workman did not appear for personal hearing rather had asked for more time vide letter dated 29/8/2011 but the Management Bank had expressed its inability to do so. Prayer has been made for dismissal of claim petition.

3. The workman/claimant filed rejoinder, reiterating his own case as set up in the statement of claim and denied the allegations of the Management.

4. Vide order dated 12/8/2014 my learned Predecessor framed following issues and parties were called upon to lead their evidence :-

- 1) Whether enquiry conducted by Management was just and proper ? If so, its effect ?
- 2) Whether workman Shri Sarwan Kumar was illegally dismissed from service ? If so, its effect ?
- 3) Whether punishment imposed on workman Shri Sarwan Kumar was harsh & shocking ? If so, its effect ?
- 4) Whether workman is entitled for superannuation of benefits and pension ? If so, its effect ?
- 5) Whether workman is entitled to any other relief, which is found just and proper in the interest of justice ?

5. It would not be out of place to mention here that since the Management opted not to participate in the proceedings, the case was proceeded ex parte against it vide order dated 19/9/2017. The workman/claimant expired on 5/8/2018 and his legal heirs namely his widow, daughter and two sons were substituted vide order dated 22/1/2019.

6. Smt. Kamla – widow of the deceased workman entered the witness box as WW1 and tendered her evidence by way of affidavit Ex.WW1/A. She placed reliance on documents Ex.WW1/1 to Ex.WW1/14 and Mark-A. On the other hand, none came forward on behalf of the Management to cross examine WW1. In fact, the Management did not lead any evidence either to rebut the case of the workman or to prove its defence.

7. Arguments were advanced by Shri Shivam Garg, A/R of the workman/claimant. Perused the records carefully. Findings on the above issues are as follows.

Issue No. 1 :-

8. A/R for the workman/claimant assailed the enquiry report on the ground that domestic enquiry conducted against the workman was totally defective, an eye wash, illegal and against the principle of natural justice inasmuch on 8/1/2011 the Inquiry Officer had declined the request of the workman to appoint Shri J.N. Kapur as defence assistant, without assigning any reason and thus, violated the principles of natural justice.

9. It is fairly settled that the Tribunal in the first instance is required to consider whether the enquiry proceedings have been held properly and are valid. Domestic enquiry being a quasi judicial one, the Enquiry Officer is required to conduct the enquiry in an unbiased and fair manner. Principles of natural justice are also required to be complied with.

10. According to the Charge sheet (Ex.WW1/3), the workman had committed number of acts of omission & commissions and unauthorisely made withdrawals from the accounts of bank's customers namely Mohd. Istakbul, Smt. Sheela without tallying drawer's signatures and from the accounts of customers namely Istatbul, Mohd. Khusar and Smt. Mukal without their mandate. As per charge No.5, the workman/charged official had received Rs.30,000/- from Shri Nahar Singh, A/C No.10724109831 for deposit into his account. Though he issued a receipt for the same, but did not credit the amount to the account of said customer.

11. The version of the claimant in her affidavit Ex.WW1 is in line and reiteration of the averments made in the claim petition. In the enquiry proceeding sheet dated 5/4/2011, a photocopy of which has been filed on record as Ex.WW1/10 (colly.), it has been mentioned that Shri Sharwan Kumar was informed that Shri J.N.Kapur can not defend his case as he is a retired bank employee. The Management has taken a stand in its written statement that the workman was not allowed to be defended by Shri J.N. Kapoor, as he was a retired employee of the Bank and could not be allowed to defend the workman, as a matter of bank's policy. First of all, the Management has not filed on record copy of any such regulation showing the policy/decision of the Management Bank that a charged official/workman can not be allowed to defend his case through retired employee. Assuming that there was any such policy/regulation of the Management, in that eventuality also the Enquiry Officer was under moral and legal obligation to give an opportunity to the charged official/workman to defend his case through a competent defence assistant/representative of his choice. Document Ex.WW1/10 shows that proceedings against the workman Sharwan Kumar were conducted in absence of his defence assistant. It is not the case of the Management that the workman had not opted for any defence assistant or that he wanted to defend the enquiry proceedings of his own. Version of the claimant that her husband vide letter dated 20/3/2010 (Ex.WW1/3 colly.) had requested the Management to supply him receipts relating to charge No.5 but the Management did not supply him copy of the same, has gone unchallenged and unassailed. Depriving the workman to defend his case through a defence assistant and not providing him all the documents alongwith the charge-sheet, amounts to violation of the principle of natural justice.

12. According to unrebutted case of the workman, fresh enquiry was conducted against him through the Enquiry Officer Shri D.D.Sharma, though the earlier Enquiry Officer Shri S.K. Maheshwari had given his enquiry report but the copy of the said enquiry report was not supplied to him. The Management has not examined any witness to explain under which circumstances fresh enquiry was conducted against the workman through Shri D.D.Sharma and as to why copy of the enquiry report given by the earlier Enquiry Officer Shri S.K.Maheshwari was not supplied to the workman. Further, the Management has not examined the Enquiry Officer or any other Officer to prove the enquiry report on the basis of which the Management awarded punishment of dismissal from service upon the workman. Non examination of the Enquiry Officer or any other official who was associated with the enquiry proceedings, is fatal to the case of the Management, so far as proving of enquiry report and its proceedings is concerned. To this view, this Tribunal refers to the decision of Hon'ble High Court of Delhi in the case of **The Kangra Co-operative Bank Ltd. Vs. M/s Seema Sharma** (2018 LLR 231), wherein it has been observed in para 9 as under :-

“The petitioner has not examined the Enquiry Officer or any of its employee as a witness in the Court to prove the enquiry proceedings and report and only chose to examine MW1 H.R.Thakur Presenting Officer to prove the same. Mr.H.R.Thakur was not an independent witness to appear in the Court and to prove the enquiry proceedings against the respondent. The Presiding (sic.Presenting) Officer is not expected to become a persecutor. He is a biased witness. Therefore, the Industrial Adjudicator has

rightly adjudicated the issue that the petitioner has failed to prove the enquiry proceedings and Enquiry Report against the respondent.

It is worthwhile to mention here that ratio of the aforesaid decision has been upheld by Division Bench of our own High Court in LPA No. 86/2018 – decided on 27/4/2018.

13. Having regard to the aforesaid facts and circumstances of the case, this Tribunal has no hesitation to hold that the Management has failed to prove the enquiry proceedings and enquiry report against the workman and also that the enquiry conducted by Management was not just and proper. Resultantly, the domestic enquiry conducted against the workman is held to be vitiated. This issue is, therefore, decided against the Management and in favour of the claimant.

Issue No.2 to 5 :-

14. All these issues being co-related and inter-connected are taken up together and can be disposed of by common discussion.

15. The version of the claimant vide affidavit Ex.WW1/A is in line and reiteration of the averments made in the claim petition. As per pleadings of the parties and evidence adduced on record, it is manifest that the claimant was working as Assistant/Teller under the Management after having been appointed on 3/3/1979. He worked under the Management Bank till his services were terminated vide order dated 10/9/2011, pursuant to the domestic enquiry conducted against him. Vide charge sheet (Ex.WW1/3), it was alleged that the workman while posted at Kalkaji Branch had committed certain acts of omission & commissions amounting to gross misconduct. It is fairly settled that burden of proving the allegations of misconduct against the workman, lies on the Management. As already stated, this Tribunal while deciding issue No.1 has held that domestic enquiry conducted against the workman/claimant stands vitiated. The Management has not led any evidence to prove the allegations of misconduct against the claimant/workman. Even if it is assumed for the sake of arguments that allegations of misconduct against the workman were proved as per enquiry report of the Enquiry Officer, in that eventuality also the Disciplinary Authority was required to give personal hearing to the workman before imposing penalty upon the workman. The workman in his statement of claim as well as in the testimony through his wife in her affidavit Ex.WW1/A has categorically stated that vide order dated 10/9/2011 the Management without affording an opportunity of hearing to the workman, imposed punishment of dismissal of service upon the workman. The Management has not led any evidence to rebut the contention of the workman or to show that personal hearing was in fact afforded to the claimant/workman prior to imposition of penalty of removal/dismissal from service. In the given circumstances, this Tribunal is of the considered opinion that the action of the Management in dismissing the workman from service can not be held to be legal and justified inasmuch the dismissal order dated 10/9/2011 suffers from procedural impropriety and moral standards.

16. Now the residual question is whether the claimant/work is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It is undisputed fact that the workman Sharwan Kumar served the Management for about 32 years. In the affidavit dated 31/7/2014 accompanied with the rejoinder, the workman/claimant had given his age as 58 years and thus, he was to superannuate in the year 2016 or so. He is no more alive as he expired on 5/8/2018 which is evident from the death certificate filed on record alongwith application moved under Order XXII rule 3 CPC for bringing his legal heirs on record. In the circumstances, the issue of reinstatement of the workman/claimant into service has become infructuous. It is fairly settled that in cases of wrongful termination of service, reinstatement with continuity of service & back wages is the normal rule and if the Management wanted to avoid payment of back wages, it has to prove that the workman was gainfully employed.

17. The Hon'ble Apex Court in case **“Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya”** reported as (2013) 10 SCC 324 has held as under :

“The propositions which can be culled out from the aforementioned judgments are :

- i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.
- ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on

the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.”

With regard to the principle to be followed by the Labour Courts/Industrial Tribunals to award back wages if order of termination/dismissal is set aside, their lordships after referring to the decision of a Bench of three Judges had laid down the law as under :- (see page 102-103 of LLR Jan.-June2015)

“17. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position, in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter’s source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.”

18. A Bench of three Judges of the Hon’ble Supreme Court in the case of Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80 held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

19. In the case of **Bholanath Lal and others Vs. Shree Om Enterprises (P) Ltd., Manu/DE/1922/2018** (decided on 10/5/2018), Hon’ble High Court of Delhi while considering the question of illegal termination and reinstatement held as under :-

“The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer’s obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee./workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/ workman his dues in the form of full back wages.”

20. Having regard to the legal position as discussed above and the fact that the claimant was performing duty to a post of regular and perennial nature, this Tribunal is of the view that ends of justice will meet if the legal heirs of workman /claimant herein are held entitled to get full back wages for the period from the date of termination of service till the date of his superannuation, as well as pensionary benefits like provident fund, gratuity etc. as per rules and other benefits, subject to adjustment of the amount if any, already paid. These issues are decided accordingly.

ORDER

The reference is answered on the contest in favour of the workman/claimant. Legal heirs of the deceased workman are held entitled to get amount towards full back wages for the period w.e.f. the date of termination of service of workman till the age of his superannuation, as well as pensionary benefits like provident fund, gratuity etc. as per rules and other benefits, subject to adjustment of the amount if any, already paid. Award is passed accordingly. Let copy of this Award be sent for publication as required under Section 17 of the Act.

PRANITA MOHANTY, Presiding Officer

25th November, 2019

नई दिल्ली, 12 फरवरी, 2020

का. आ. 185.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स अल्ट्राटेक सीमेन्ट वर्क्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 29/2019) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.02.2020 को प्राप्त हुआ था।

[सं. एल-29011/23/2017-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 12th February, 2020

S.O. 185.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2019) of the Central Government Industrial Tribunal/Labour Court-2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Ultratech Cement Works Limited and their workman, which was received by the Central Government on 10.02.2020.

[No. L-29011/23/2017-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE**IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH**

Present: Sh. A. K. Singh, Presiding Officer

ID No. 29/2019
Registered on:-06.05.2019

The General Secretary, Ultratech Cement, Contractor Workers Union (UCCWU),
VPO-Mehraj, Patti Karamchand, Tehsil-Phul, District Bathinda (Punjab).

...Workmen-union

Versus

The Unit Head, M/s. Ultratech Cement Works Limited,
Village-Lehra Mohabhat, District Bathinda (Punjab).

...Management

AWARD
Passed on:-16.01.2020

Central Government vide Notification No. L-29011/23/2017-IR(M) Dated 25.04.2019, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the demands of UltraTech Cement Contractor Workers Union Bathinda as mentioned in the Charter of demands dated 16th May, 2016 from the Management of the Unit Head, UltraTech Cement Limited, Bathinda are legal, fair and justified? If yes, what relief the union and workmen are entitled to and from which date?”

1. On the receipt of the above reference, notice was sent to the workmen-union as well as the management. The postal article sent to the workmen/union, referred above, is duly served as per status report of the registered post. Hence, in spite of the sufficient opportunity, none turned up before the Tribunal on behalf of the workmen-union. However, workmen/union is given an opportunity to file claim petition but none turned up in spite of the repeated opportunities and claim statement is not filed on behalf of the workmen-union which shows that the workmen/union is not interested in adjudication of the reference on merit.
2. Since the workmen/union has neither put their appearance nor has they led any evidence so as to prove their cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim Award’. It is also clarified that passing of the no claim award/no dispute award would not bar the workmen-union from approaching the Appropriate Government/this Tribunal for adjudication of this case on merits or filing any fresh claim. Let copy of this award be sent to the Appropriate Government as required under Section 17 of the Act for publication.

A. K. SINGH, Presiding Officer

नई दिल्ली, 12 फरवरी, 2020

का. आ. 186.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स गोगा गुरुशांतिह्या एंड ब्रदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 32/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.02.2020 को प्राप्त हुआ था।

[सं. एल-26011/24/2016-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 12th February, 2020

S.O. 186.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2017) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Gogga Gurusanthaiah and Brothers, and their workman, which was received by the Central Government on 11.02.2020.

[No. L-26011/24/2016-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 3rd FEBRUARY 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

C R No. 32/2017

I Party

Sh. A G Ismail,
21st Ward, Compound Subedar Bavi, Behind Vijaya
Talkies, Gafoor Khan Masjid, Muragere, HOSPET,
BELLARY – 583 201.

II Party

M/s. Gogga Gurusanthaiah and Bros., Mine Owners,
P B No. 4, Nehru Cooperative Colony, Hospet,
BELLARY – 583 203.

Appearances :

I Party : Sh. Clifton D'Rozario, Advocate
 II Party : Sh. T. Satyanarayan, Advocate

1. The Government of India, Ministry of Labour vide order No. L-26011/24/2016-IR(M) dated 09.10.2017 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred as "The Act") (14 of 1947) referred the following Industrial Dispute to this Tribunal for adjudication:

SCHEDEULE

"Whether the action of the management of M/s. Gogga Gurusanthiah & Bros. Mines Owners, Hospet, Bellary in not allowing workman Sh. A.G.Ismail to resume duty w.e.f. 19.12.2015 after availing two days leave is justified? If not, to what relief the workman is entitled to?"

2. The 1st Party workman is former employee of the 2nd Party who alleges that he is illegal refused employment by the 2nd Party w.e.f. 19.12.2015.

3. He claims that he served the 2nd Party as a Wheel Loader Operator for around 18 years. On 17.12.2015 he availed leave for two days, when he returned to duty on 19.12.2015 he was refused employment. Before removing him from service no enquiry is conducted and no allegation is made. With the assistance of the Trade Union he raised industrial dispute before the RLC(C), Bellary with regard to his illegal refusal of employment. During the conciliation proceedings it was submitted that Senior General manager (Mines) received his resignation letter dated 05.02.2016; at no point of time he has resigned from the job; the alleged resignation letter is fabricated and fraudulently concocted by the 2nd Party, they also contended that his dues are settled. Infact, during January 2011 he was told to take certain amount of money and they would start his service afresh, when he protested against the same, he was told he could accept the same or they would remove him from service. Without any choice he had to accept the same; however, there was no break in his service, he did not miss his work even for a day. His termination amounts to retrenchment as contemplated by Section 2(oo) of the ID act but without following the mandatory requirement of Section 25F, F, H and N of the Act. he is the sole earning member of the family and without employment.

4. The 2nd Party in their counter statement refuted the allegations made in the claim statement and further contended they have not taken his signatures on blank papers during his employment; his resignation letter dated 20.01.2011 was accepted; a memo dated 22.01.2011 was issued accepting his resignation from 31.01.2011 and his accounts was settled on 31.01.2011 as requested by him. He had more than 15 days of time before accepting the settlement on 17.02.2011, he did not withdraw his resignation or did not comply either in writing to the Trade Union or to the Labour authorities alleging that his resignation is not voluntarily accepted. After resigning the job and after settling his account on 17.02.2011 for the period upto 31.01.2011 he started working as fresh employee on consolidated salary on 02.06.2011; he tendered his voluntary resignation on 06.02.2016 which is accepted on 08.02.2016 on realising that he will not be eligible for gratuity benefits for not completing five years of service, he has raised his dispute.

5. On completion of the pleadings the the Partner of the 2nd Party firm placed his affidavit in lieu of his examination in chief examination and produced as many as 25 documents. The matter was posted for cross-examination of MW 1 on 30.09.2019.

6. At that stage with the able assistance of Senior Counsel both parties entered into settlement and filed Joint Memo on 23.12.2019.

7. The terms and conditions of the said settlement reads thus :

- "1) The 2nd Party Management has agreed to pay consolidated total sum of Rs. 2,75,000/- (Rupees Two Lakhs and Seventy Five Thousand only) by Cheque No. 002805 dated 23-12-2019 of Kotak Bank, Hospet, drawn in favour of Sri. A.G.Ismail, the 1st Party Workman, in full and final settlement of all and any dues / claims from the 1st Party Workman against the 2nd Party Management arising out of the above claim petition.
- 2) The 1st Party Workman has accepted the terms and conditions of settlement acknowledging receipt of consolidated total sum of Rs. 2,75,000/- Rupees Two Lakhs and Seventy Five Thousand only) by Cheque No. 002805 dated 23-12-2019 of Kotak Bank, Hospet, drawn in his favour in full and final settlement of all and any dues / claims from the 1st Party Workman

against the 2nd Party Management arising out of the above claim petition. Subject to the encashment of the cheque above mentioned, there shall be no claim of whatsoever nature by the 1st Party Workman against the 2nd Party Management, after this settlement.”

8. In the open court hall, the 1st Party workman Sh. A G Ismail in the presence of his advocate Miss Avani C reported receipt of cheque No. 002805 dated 23.12.2019 for Rs. 2,75,000.00 drawn on Kotak Bank, Hospet Branch towards full and final settlement of all his claims against the 2nd Party.

9. I am convinced that the said settlement is beneficial to the 1st Party workman and no industrial dispute ensues as on today between the parties. Hence,

AWARD

The Reference is Rejected since the dispute is settled.

(Dictated to U D C, transcribed by him, corrected and signed by me on 3rd February 2020)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 12 फरवरी, 2020

का. आ. 187.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स गोगा गुरुशांतिहया एंड ब्रदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलूर के पंचाट (संदर्भ संख्या 09/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.02.2020 को प्राप्त हुआ था।

[सं. जेड-16025/4/2020-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 12th February, 2020

S.O. 187.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 09/2017) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Gogga Gurusanthaiah and Brothers, and their workman, which was received by the Central Government on 11.02.2020.

[No. Z-16025/4/2020-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 3rd FEBRUARY 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

ID No. 09/2017

I Party

Sh. B Rafiq,
S/o Sh. B Shaikh Sab,
Residing at Anwar Manzil, 21st Ward,
Oramma Madiana, Bellary Road, HOSPET
(PO), BELLARY

II Party

The Proprietor,
M/s. Gogga Gurusanthaiah and Bros., P B No. 4,
Nehru Cooperative Colony,
HOSPETE – 583 203.

Appearances :

I Party : Sh. Clifton D'Rozario, Advocate

II Party : Sh. T. Satyanarayan, Advocate

1. It is a petition filed under Section 2A of the ID Act. The Petitioner / 1st Party workman claims that he was working as an Excavator Operator with the 2nd Party for a period of 12 years; he availed leave on 17.12.2015 after he returned to duty on 19.12.2015 he was refused employment illegally, the refusal amounts to retrenchment. Before retrenching him 2nd Party has not conducted any enquiry against him and there is no allegation against him; left with no option he approached Bellary Zilla Gani Karmikara Sangha and raised the dispute; during the conciliation the 2nd Party contended that Senior General Manager (Mines) received his resignation letter dated 05.02.2016. His dues are settled. At no point of time he resigned the job. In January 2011 he was told to take settlement of his amount and they would start his service afresh; when he protested he was told that he could either accept this thing or they would remove him from service left with no choice he accepted the same. In reality there was no break in service. The resignation letter is fabricated and fraudulently concocted. During his employment his signatures were obtained on several blank papers and probably one such letter is misused by the 2nd Party as letter of resignation. He is the sole earning member of the family and without employment. His Termination from service is in violation of the mandatory provisions of Section 25F, G, H and N of the Act.

2. 2nd Party Countered the claim, refuted the allegations and asserted that he did not withdraw his resignation before accepting the settlement or did not complain in writing to the 2nd Party Management or to the Trade Union or to the Labour authorities. After accepting the settlement he started working as fresh employee on consolidated salary from 02.06.2011, he tendered voluntary resignation letter dated 05.02.2016 which was accepted w.e.f. 08.02.2016, he is not dismissed, discharged or retrenched, his voluntary resignation is accepted, there is no question of compliance of mandatory provisions of 25F, G, H and N of the Act.

3. On completion of the pleadings the 1st Party adduced his evidence and the matter stood posted for rebuttal evidence of the 2nd Party. The Partner of the 2nd Party firm placed his affidavit in lieu of his examination in chief examination and produced as many as 12 documents.

4. At that stage with the able assistance of Senior Counsel Sri Muralidhar both parties entered into settlement and filed Joint Memo on 23.12.2019.

5. The terms and conditions of the said settlement reads thus :

- “1) The 2nd Party Management has agreed to pay consolidated total sum of Rs. 2,50,000/- (Rupees Two Lakhs and Fifty Thousand only) by Cheque No. 002806 dated 23-12-2019 of Kotak Bank, Hospet, drawn in favour of Sri B. Rafiq, the 1st Party Workman, in full and final settlement of all and any dues / claims from the 1st Party Workman against the 2nd Party Management arising out of the above claim petition.
- 2) The 1st Party Workman has accepted the terms and conditions of settlement acknowledging receipt of consolidated total sum of Rs. 2,50,000/- (Rupees Two Lakhs and Fifty Thousand only) by Cheque No. 002806 dated 23-12-2019 of Kotak Bank, Hospet, drawn in his favour in full and final settlement of all and any dues / claims from the 1st Party Workman against the 2nd Party Management arising out of the above claim petition. Subject to the encashment of the cheque above mentioned, there shall be no claim of whatsoever nature by the 1st Party Workman against the 2nd Party Management, after this settlement”

6. In the open court hall, the 1st Party workman Sh. B Rafiq in the presence of his advocate Miss Avani C reported receipt of cheque No. 002806 dated 23.12.2019 for Rs. 2,50,000.00 drawn on Kotak Bank, Hospet Branch towards full and final settlement of all his claims against the 2nd Party.

7. I am convinced that the said settlement is beneficial to the 1st Party workman and no dispute ensues as on today between the parties. Hence,

AWARD

The Petition filed by Sh. B Rafiq under Section 10(2)(a) is Rejected since the dispute is settled.

(Dictated to U D C, transcribed by him, corrected and signed by me on 3rd FEBRUARY 2020)

नई दिल्ली, 12 फरवरी, 2020

का. आ. 188.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बजाज आलियांज लाइफ इंश्योरेंस कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, पटना पंचाट (संदर्भ संख्या 03(सी)/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.02.2020 को प्राप्त हुआ था।

[सं. जे.ड-16025/4/2020-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 12th February, 2020

S.O. 188.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 03 (C)/2016) of the Industrial Tribunal/Labour Court, Patna now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bajaj Allianz Life Insurance Co. Ltd. and their workman, which was received by the Central Government on 11.02.2020.

[No. Z-16025/4/2020-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA

I.D. Case No. 03 (C) of 2016

Between the management of (1) Bajaj Allianz Life Insurance Co. Ltd. through its Chairman, at GE, Plaza, Airport Road, Yerawada, Pune-411006, Maharashtra (2) Bajaj Allianz Life Insurance Co. Ltd. through Chief Executive Officer, at GE Plaza, Airport Road, Yerawada, Pune-411006, Maharashtra (3) Associate Vice President-Human Resource, Bajaj Allianz Life Insurance Co. Ltd, at GE Plaza, Airport Road, Yerawada, Pune-411006, Maharashtra (4) Branch Manager, Agency, Bajaj Allianz Life Insurance Co. Ltd, at 101, Rajendra Ram Plaza, Exhibition Road, Patna-800001 (5) (a) The Branch Manager, Jahanabad Branch (5)(b) The State Head HR, Bihar and Jharkhand, 1st Floor Rajendra Ram Plaza, Exhibition Road, Patna-800001 (5)(c) The General Manager, 1st Floor, Rajendra Ram Plaza, Exhibition Road, Patna-800001 and their workman Kulshekhar Kumar, S/O- Late Arvind Sharma, R/O Village- Surdaspur, P.O- Modanganj, P.S- Ghoshi, Dist.- Jehanabad-804432.

For the management :- Sri S. N. Choubey, Advocate
Sri Arun Kumar Lal, Advocate

For the workman :- Sri Nishant Kumar, Advocate.

Present : Vishweshwar Nath Mishra, Presiding Officer, Industrial Tribunal, Patna

AWARD

Patna, dt- 23rd January, 2020

1. The present case has been filed an application u/s 2A (1 & 2) of the Industrial Dispute (Amendment) Act, 2010 by the aforesaid workman who seeks relief of reinstatement in the services with full back wages and service benefits, which would have accrued to the petitioner, had he been not dismissed illegally by the respondent, not to change the service terms of the petitioner and therefore the respondents be directed to pay the dues salaries of the petitioner and to unblock the login id of the petitioner and allow him to perform his work as he was doing on 30.04.2015.

2. Matter was raised on 10.09.2015 by the workman before the Assistant Labour Commissioner (Central), Patna (for short A.L.C (C), who issued notice 4th November, 2015 to the concerned parties vide file no. 1/122/15-ALC-1.

3. The Assistant Labour Commissioner (C) Patna held discussions / Conciliation Proceedings. The attitude of the management, during conciliation proceeding was far from conciliatory and there was no scope of redressal of grievances either before the management or before the conciliation officer.

4. As a period of more than 45 days elapsed with no sign of any settlement, the workman preferred an application before this tribunal as per the provisions of section 2A (1 & 2) of the Industrial Disputes (Amendment) Act, 2010.

5. Registered notices were issued to the respondents / management but they did not appear. On 20.03.2018 petitioner / workman filed a petition for adding three more persons as respondents because their presence in this case is essential for the just decision of the case and the same was allowed by this tribunal and petitioner / workman was directed to add the names of the parties in the main application and after that the office was directed to issue summon / notice to the newly added respondents and petitioner / workman was also directed to deposit requisite for sending notice to the respondents.

6. Management first time appeared on 29.10.2018. Objection petition has been filed on behalf of the management on 20.06.2019 along with judgement of the Hon'ble Patna High Court order passed in C.W.J.C No.- 2053 of 2016 dt- 22.11.2017 and same has been confirmed in L.P.A No.- 1822 of 2017 dt- 17.05.2018 and praying therein that the instant I.D.Case is not maintainable in the light of order of the Hon'ble Patna High Court.

7. From perusal of the record, it appears that since 26.04.2018 petitioner / workman is not appearing before this tribunal and the order dated- 20.03.2018 has not been complied by the petitioner / workman till date. Several opportunities were given to the petitioner / workman for appearance and to comply the order dt- 20.03.2018. On 20.06.2019 no one appeared on behalf of the workman / petition after repeated call. It appears that petitioner / workman has lost interest in this case.

8. In view of the recent judgement of the Hon'ble Patna High Court passed in C.W.J.C No.- 2053 of 2016 on 22.11.2017 and confirmed in L.P.A No.- 1822 of 2017 on 17.05.2018 the present I.D. Case is not maintainable and hence the same is hereby dismissed. This award is effected after gazette notification / publication of award.

Accordingly, this is my award.

Dictated & Corrected by me.

VISHWESHWAR NATH MISHRA, Presiding Officer

नई दिल्ली, 12 फरवरी, 2020

का. आ. 189.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बजाज आलियांज लाइफ इंश्योरेंस कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में ओद्योगिक अधिकरण एवं श्रम न्यायालय, पटना के पंचाट (संदर्भ संख्या 01(सी)/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.02.2020 को प्राप्त हुआ था।

[सं. जे.ड-16025/4/2020-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 12th February, 2020

S.O. 189.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 01 (C)/2016) of the Industrial Tribunal/Labour Court, Patna now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bajaj Allianz Life Insurance Co. Ltd. and their workman, which was received by the Central Government on 11.02.2020.

[No. Z-16025/4/2020-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA

I.D. Case No. 01 (C) of 2016

Between the management of (1) Bajaj Allianz Life Insurance Co. Ltd. through its Chairman, at GE, Plaza, Airport Road, Yerawada, Pune-411006, Maharashtra (2) Bajaj Allianz Life Insurance Co. Ltd. through Chief Executive Officer, at GE Plaza, Airport Road, Yerawada, Pune-411006, Maharashtra (3) Associate Vice President-Human Resource, Bajaj Allianz Life Insurance Co. Ltd, at GE Plaza, Airport Road, Yerawada, Pune-411006, Maharashtra (4) Branch Manager, Agency, Bajaj Allianz Life Insurance Co. Ltd, at K.P. Agrawal Complex M.G Road, Aurangabad-824101 (5) (a) The Branch Manager, Aurangabad, Kirti Agrawal Complex, M.G Road, Bihar-824101 (5)(b) The State Head HR, Bihar and Jharkhand, 1st Floor Rajendra Ram Plaza, Exhibition Road, Patna-800001 (5)(c) The General Manager, 1st Floor, Rajendra Ram Plaza, Exhibition Road, Patna-800001 and their workman Sri Jai Kishore Singh, S/O- Late Bhagwan Das Singh, R/O Village+Post Kamta, Parsi (Mehandia), Arwal, Jehanabad, Bihar, Pin-804428.

For the management:- Sri S.N.Choubey, Advocate
Sri Arun Kumar Lal, Advocate

For the workman :- Sri Nishant Kumar, Advocate.

Present : Vishweshwar Nath Mishra Presiding Officer, Industrial Tribunal, Patna

AWARD

Patna, dt- 24th January, 2020

1. The present case has been filed an application u/s 2A (1 & 2) of the Industrial Dispute (Amendment) Act, 2010 by the aforesaid workman who seeks relief of reinstatement in the services with full back wages and service benefits, which would have accrued to the petitioner, had he been not dismissed illegally by the respondent, not to change the service terms of the petitioner and therefore the respondents be directed to pay the dues salaries of the petitioner and to unblock the login id of the petitioner and allow him to perform his work as he was doing on 30.04.2015.
2. Matter was raised on 10.09.2015 by the workman before the Assistant Labour Commissioner (Central), Patna (for short A.L.C (C), who issued notice 5th October, 2015 to the concerned parties vide file no. 1/119/15-ALC-1.
3. The Assistant Labour Commissioner (C) Patna held discussions / Conciliation Proceedings. The attitude of the management, during conciliation proceeding was far from conciliatory and there was no scope of redressal of grievances either before the management or before the conciliation officer.
4. As a period of more than 45 days elapsed with no sign of any settlement, the workman preferred an application before this tribunal as per the provisions of section 2A (1 & 2) of the Industrial Disputes (Amendment) Act, 2010.
5. Registered notices were issued to the respondents / management but they did not appear. On 20.03.2018 petitioner / workman filed a petition for adding three more persons as respondents because their presence in this case is essential for the just decision of the case and the same was allowed by this tribunal and petitioner / workman was directed to add the names of the parties in the main application and after that the office was directed to issue summon / notice to the newly added respondents and petitioner / workman was also directed to deposit requisite for sending notice to the respondents.
6. Management first time appeared on 29.10.2018. Objection petition has been filed on behalf of the management on 20.06.2019 along with judgement of the Hon'ble Patna High Court order passed in C.W.J.C No.- 2053 of 2016 dt- 22.11.2017 and same has been confirmed in L.P.A No.- 1822 of 2017 dt- 17.05.2018 and praying therein that the instant I.D.Case is not maintainable in the light of order of the Hon'ble Patna High Court.

7. From perusal of the record, it appears that since 26.04.2018 petitioner / workman is not appearing before this tribunal and the order dated- 20.03.2018 has not been complied by the petitioner / workman till date. Several opportunities were given to the petitioner / workman for appearance and to comply the order dt- 20.03.2018. On 20.06.2019 no one appeared on behalf of the workman / petition after repeated call. It appears that petitioner / workman has lost interest in this case.

8. In view of the recent judgement of the Hon'ble Patna High Court passed in C.W.J.C No.- 2053 of 2016 on 22.11.2017 and confirmed in L.P.A No.- 1822 of 2017 on 17.05.2018 the present I.D. Case is not maintainable and hence the same is hereby dismissed. This award is effected after gazette notification / publication of award.

Accordingly, this is my award.

24.01.2020

VISHWESHWAR NATH MISHRA, Presiding Officer

नई दिल्ली, 12 फरवरी, 2020

का. आ. 190.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बजाज अलियांज लाइफ इंश्योरेंस कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में ओद्योगिक अधिकरण एवं श्रम न्यायालय, पटना के पंचाट (संदर्भ संख्या 02(सी)/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.02.2020 को प्राप्त हुआ था।

[सं. जेड-16025/4/2020-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 12th February, 2020

S.O. 190.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 02 (C)/2016) of the Industrial Tribunal/Labour Court, Patna now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Bajaj Allianz Life Insurance Co. Ltd. and their workman, which was received by the Central Government on 11.02.2020.

[No. Z-16025/4/2020-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA

I.D. Case No. : 02 (C) of 2016

Between the management of (1) Bajaj Allianz Life Insurance Co. Ltd. through its Chairman, at GE, Plaza, Airport Road, Yerawada, Pune-411006, Maharashtra (2) Bajaj Allianz Life Insurance Co. Ltd. through Chief Executive Officer, at GE Plaza, Airport Road, Yerawada, Pune-411006, Maharashtra (3) Associate Vice President-Human Resource, Bajaj Allianz Life Insurance Co. Ltd, at GE Plaza, Airport Road, Yerawada, Pune-411006, Maharashtra (4) Branch Manager, Agency, Bajaj Allianz Life Insurance Co. Ltd, at Gandhi Complex, Near Ajanta Cinema Ramchandrapur, Biharsharif-803101 (5) (a) The Branch Manager, Biharsharif Branch, Above, SBI ADB Branch, Near Ajanta cinema Ramchandrapur, Biharsharif, Nalanda-803101 (5)(b) The State Head HR, Bihar and Jharkhand, 1st Floor Rajendra Ram Plaza, Exhibition Road, Patna-800001 (5)(c) The General Manager, 1st Floor, Rajendra Ram Plaza, Exhibition Road, Patna-800001 and their workman Dileep Kumar, S/O- Shri Arjun Singh, R/O at Kundwapar, Post Ekanger Dih, P.S- Ekangersari, Dist-Nalanda, Bihar-801301.

For the management:- Sri S.N.Choubey, Advocate
Sri Arun Kumar Lal, Advocate

For the workman :- Sri Nishant Kumar, Advocate

Present : Vishweshwar Nath Mishra, Presiding Officer, Industrial Tribunal, Patna

AWARD

Patna, dt. 24th January, 2020

1. The present case has been filed an application u/s 2A (1 & 2) of the Industrial Dispute (Amendment) Act, 2010 by the aforesaid workman who seeks relief of reinstatement in the services with full back wages and service benefits, which would have accrued to the petitioner, had he been not dismissed illegally by the respondent, not to change the service terms of the petitioner and therefore the respondents be directed to pay the dues salaries of the petitioner and to unblock the login id of the petitioner and allow him to perform his work as he was doing on 30.04.2015.
2. Matter was raised on 10.09.2015 by the workman before the Assistant Labour Commissioner (Central), Patna (for short A.L.C (C), who issued notice 5th October, 2015 to the concerned parties vide file no. 1/120/15-ALC-1.
3. The Assistant Labour Commissioner (C) Patna held discussions / Conciliation Proceedings. The attitude of the management, during conciliation proceeding was far from conciliatory and there was no scope of redressal of grievances either before the management or before the conciliation officer.
4. As a period of more than 45 days elapsed with no sign of any settlement, the workman preferred an application before this tribunal as per the provisions of section 2A (1 & 2) of the Industrial Disputes (Amendment) Act, 2010.
5. Registered notices were issued to the respondents / management but they did not appear. On 20.03.2018 petitioner / workman filed a petition for adding three more persons as respondents because their presence in this case is essential for the just decision of the case and the same was allowed by this tribunal and petitioner / workman was directed to add the names of the parties in the main application and after that the office was directed to issue summon / notice to the newly added respondents and petitioner / workman was also directed to deposit requisite for sending notice to the respondents.
6. Management first time appeared on 29.10.2018. Objection petition has been filed on behalf of the management on 20.06.2019 along with judgement of the Hon'ble Patna High Court order passed in C.W.J.C No.- 2053 of 2016 dt- 22.11.2017 and same has been confirmed in L.P.A No.- 1822 of 2017 dt- 17.05.2018 and praying therein that the instant I.D.Case is not maintainable in the light of order of the Hon'ble Patna High Court.
7. From perusal of the record, it appears that since 26.04.2018 petitioner / workman is not appearing before this tribunal and the order dated- 20.03.2018 has not been complied by the petitioner / workman till date. Several opportunities were given to the petitioner / workman for appearance and to comply the order dt- 20.03.2018. On 20.06.2019 no one appeared on behalf of the workman / petition after repeated call. It appears that petitioner / workman has lost interest in this case.
8. In view of the recent judgement of the Hon'ble Patna High Court passed in C.W.J.C No.- 2053 of 2016 on 22.11.2017 and confirmed in L.P.A No.- 1822 of 2017 on 17.05.2018 the present I.D. Case is not maintainable and hence the same is hereby dismissed. This award is effected after gazette notification / publication of award.

Accordingly, this is my award.

24.01.2020

VISHWESHWAR NATH MISHRA, Presiding Officer

नई दिल्ली, 12 फरवरी, 2020

का. आ. 191.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बजाज आलियांज लाइफ इंश्योरेंस कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, पटना के पंचाट (संदर्भ संख्या 04(सी)/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.02.2020 को प्राप्त हुआ था।

[सं. जे.ड-16025/4/2020-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 12th February, 2020

S.O. 191.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 04 (C)/2016) of the Industrial Tribunal/Labour Court, Patna now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Bajaj Allianz Life Insurance Co. Ltd. and their workman, which was received by the Central Government on 11.02.2020.

[No. Z-16025/4/2020-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA

I.D. Case No. : 04 (C) of 2016

Between the management of (1) Bajaj Allianz Life Insurance Co. Ltd. through its Chairman, at GE, Plaza, Airport Road, Yerawada, Pune-411006, Maharashtra (2) Bajaj Allianz Life Insurance Co. Ltd. through Chief Executive Officer, at GE Plaza, Airport Road, Yerawada, Pune-411006, Maharashtra (3) Associate Vice President-Human Resource, Bajaj Allianz Life Insurance Co. Ltd, at GE Plaza, Airport Road, Yerawada, Pune-411006, Maharashtra (4) Branch Manager, Agency, Bajaj Allianz Life Insurance Co. Ltd, at opposite Sadhu Sweets, Danapur-801503 (5) (a) The State Head, HR, Bihar and Jharkhand, 1st Floor, Rajendra Ram Plaza, Exhibition Road, Patna-800001. (5)(b) (5)(c) The General Manager, 1st Floor, Rajendra Ram Plaza, Exhibition Road, Patna-800001 and their workman Sudhir Kumar, S/O- Parmanand Thakur, R/O- Prema Sadan, Kumharar Road, Near Sanichara Mandir, Patna-800006.

For the management:- Sri S.N.Choubey, Advocate
Sri Arun Kumar Lal, Advocate

For the workman :- Sri Nishant Kumar, Advocate

Present :-Vishweshwar Nath Mishra, Presiding Officer, Industrial Tribunal, Patna

AWARD

Patna, dt- 23rd January, 2020

1. The present case has been filed an application u/s 2A (1 & 2) of the Industrial Dispute (Amendment) Act, 2010 by the aforesaid workman who seeks relief of reinstatement in the services with full back wages and service benefits, which would have accrued to the petitioner, had he been not dismissed illegally by the respondent, not to change the service terms of the petitioner and therefore the respondents be directed to pay the dues salaries of the petitioner and to unblock the login id of the petitioner and allow him to perform his work as he was doing on 30.04.2015.

2. Matter was raised on 10.09.2015 by the workman before the Assistant Labour Commissioner (Central), Patna (for short A.L.C (C), who issued notice 4th November, 2015 to the concerned parties vide file no. 1/121/15-ALC-1.

3. The Assistant Labour Commissioner (C) Patna held discussions / Conciliation Proceedings. The attitude of the management, during conciliation proceeding was far from conciliatory and there was no scope of redressal of grievances either before the management or before the conciliation officer.

4. As a period of more than 45 days elapsed with no sign of any settlement, the workman preferred an application before this tribunal as per the provisions of section 2A (1 & 2) of the Industrial Disputes (Amendment) Act, 2010.

5. Registered notices were issued to the respondents / management but they did not appear. On 20.03.2018 petitioner / workman filed a petition for adding three more persons as respondents because their presence in this case is essential for the just decision of the case and the same was allowed by this tribunal and petitioner / workman was directed to add the names of the parties in the main application and after that the office was directed to issue summon / notice to the newly added respondents and petitioner / workman was also directed to deposit requisite for sending notice to the respondents.

6. Management first time appeared on 29.10.2018. Objection petition has been filed on behalf of the management on 20.06.2019 along with judgement of the Hon'ble Patna High Court order passed in C.W.J.C No.- 2053 of 2016 dt- 22.11.2017 and same has been confirmed in L.P.A No.- 1822 of 2017 dt- 17.05.2018 and praying therein that the instant I.D.Case is not maintainable in the light of order of the Hon'ble Patna High Court.

7. From perusal of the record, it appears that since 26.04.2018 petitioner / workman is not appearing before this tribunal and the order dated- 20.03.2018 has not been complied by the petitioner / workman till date. Several opportunities were given to the petitioner / workman for appearance and to comply the order dt. 20.03.2018. On 20.06.2019 no one appeared on behalf of the workman / petition after repeated call. It appears that petitioner / workman has lost interest in this case.

8. In view of the recent judgement of the Hon'ble Patna High Court passed in C.W.J.C No.- 2053 of 2016 on 22.11.2017 and confirmed in L.P.A No.- 1822 of 2017 on 17.05.2018 the present I.D. Case is not maintainable and hence the same is hereby dismissed. This award is effected after gazette notification / publication of award.

Accordingly, this is my award.

Dictated & Corrected by me.

23.01.2020

VISHWESHWAR NATH MISHRA, Presiding Officer